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Interstate Commerce Commission
1986 Annual Report

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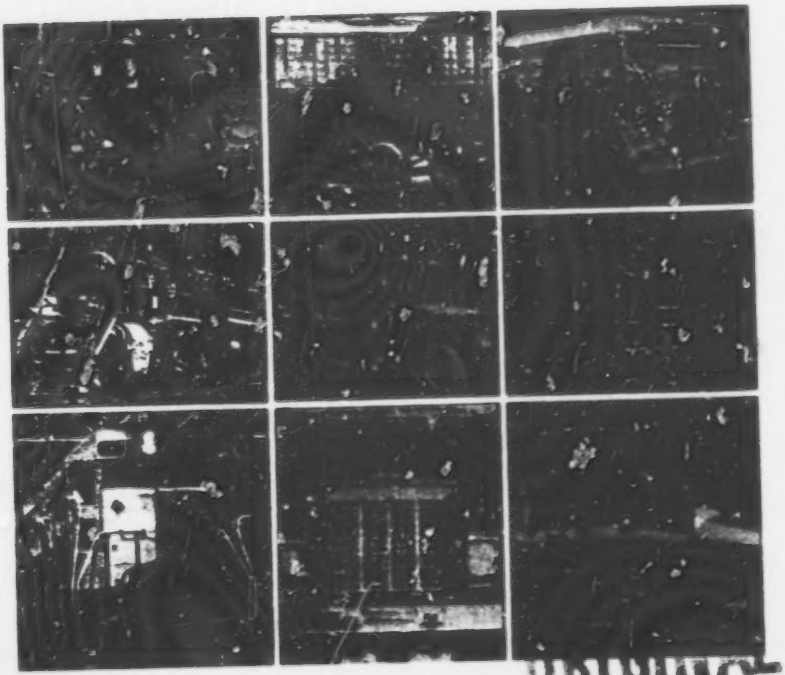

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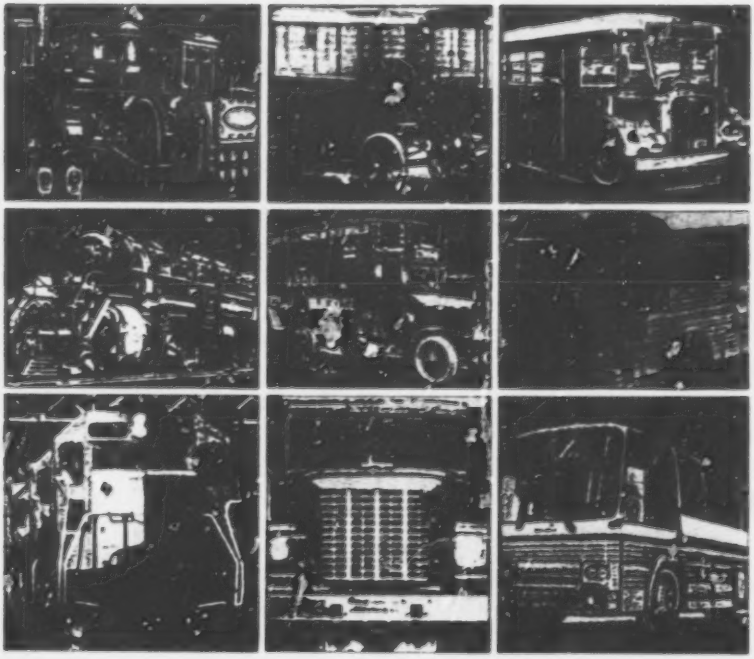

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LETTER OF TRANSMITTAL

To the Congress of the United States

Washington, D.C. April 4, 1987

It is my pleasure to submit the one hundredth Annual Report of the Interstate Commerce Commission, in accordance with the Interstate Commerce Act.

The report generally embraces the fiscal year ended September 30, 1986, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the 1986 fiscal year appears in Appendix D.

Heather J. Gradison
Chairman

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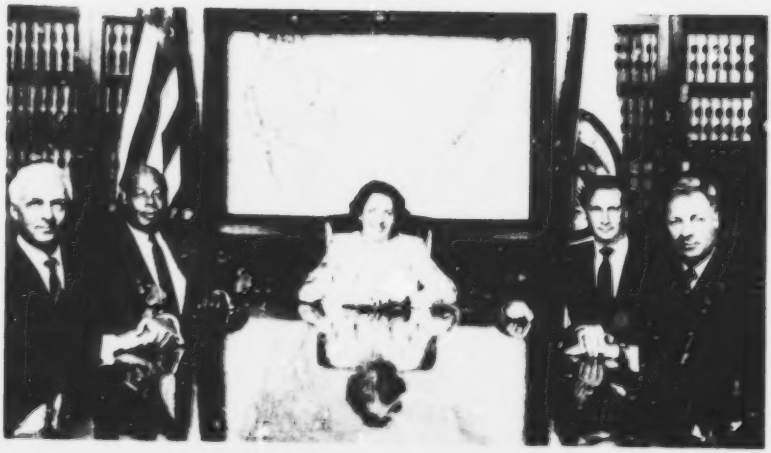
THE COMMISSION

(As of September 30, 1986)

	Appointed	Term Expires Dec. 31
Heather J. Gradison, *Chairman* (R) Ohio	1982	1988
J.J. Simmons, III, *Vice Chairman* (D) Oklahoma ..	1984	1990
Malcolm M.B. Sterrett (R) Maryland	1982	1987
Frederic N. Andre (R) Indiana	1982	1987
Paul H. Lamboley (D) Nevada	1984	1989



The Commissioners. From the left, Commissioner Frederic N. Andre; Vice Chairman J. J. Simmons, III; Chairman Heather J. Gradison; Commissioner Malcolm M. B. Sterrett; and Commissioner Paul H. Lamboley.

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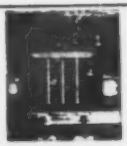

Functions and Responsibility

The Interstate Commerce Commission is an independent federal Commission responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the Commission attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 42,232 for-hire companies providing surface transportation in the U.S. These companies include railroads, trucking firms, bus lines, water carriers, one coal slurry pipeline, and freight forwarders.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC is authorized to have 5 Commissioners, each with a five-year term of office.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authorities to the Commission's 12 bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental agencies. In addition, the Chairman is generally responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and
4. Development and utilization of effective, expert staff support for the fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission or assumes the Chairman's duties during the Chairman's absence or illness. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, or discipline of Interstate Commerce Commission practitioners.

During fiscal year 1986, the Commission's activities were carried out through an organizational structure consisting of the Commission's bureaus and offices as follows:

- Office of Public Assistance (Special Counsel)—functions as a clearing house for resolution of small-business problems relative to surface transportation regulation and advises the Commission on the nature and status of such problems, contributes to the public-interest record in Commission proceedings and assists individuals, consumer groups, small communities, small shippers, and public utility commission officials participating in those proceedings.
- Office of Legislative and Public Affairs—analyzes legislative proposals; assists in the development of the Commission's own legislative proposals, aids Congress in drafting of legislation; assists in the preparation of testimony to be presented before Congressional committees; assists Members of Congress and other representa-

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tives of the 50 states with matters pertaining to the work of the Commission; furnishes information to the general public and the media concerning ICC decisions and activities; conducts briefings for the media and U.S. and foreign visitors; and prepares the ICC's Annual Report to Congress.

- Office of Human Relations—manages the Commission's program to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.
- Office of the Managing Director—manages the Commission's day-to-day operations.
- Office of the Secretary—serves as the Commission's documentation center and is responsible for the issuance of the Commission's decisions and other legal documents.
- Office of the General Counsel—renders legal opinions to the Commission, and defends Commission decisions challenged in court.
- Office of Hearings—staffed by Administrative Law Judges, this office conducts the Commission's hearings.
- Office of Transportation Analysis—conducts economic and statistical analyses of the transportation industry and provides economic advice to the Commission upon need or request.
- Office of Proceedings—processes formal ICC cases pertaining to operating rights, financial matters, rates, and competitive practices.
- Office of Compliance and Consumer Assistance—monitors the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to ensure compliance with ICC policies, and assists the public in the resolution of complaints against ICC-regulated companies.
- Bureau of Accounts—concerned with the accounting aspect of economic regulation, this office prescribes uniform accounting rules, reviews various financial reports, and conducts audits of the pertinent records of transportation firms.
- Bureau of Traffic—monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tarrifs before they may become effective.

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YEAR IN REVIEW

On October 11, 1985, the Commission issued a final rule requiring Class I railroads to submit a report from an independent public accountant stating that specified data supplied in "R-1" annual reports submitted to the Commission have been examined using agreed-upon procedures, and that the data have been found to be in compliance with the Commission's *Uniform System of Accounts for Railroad Companies*. During fiscal year 1986, audit procedures were developed for use by independent accountants in performing railroad audits required by this rule.

On October 24, the Commission modified its railroad market dominance regulations to stipulate that railroads have the burden of establishing that geographic or product competition precludes a finding of market dominance over a rail movement. On October 31, the Commission's new competitive access rules governing joint-rate and through-route cancellations and prescriptions, and terminal access requests, became effective.

Also in October, the Commission opened a proceeding to investigate the circumstances that led to the recent inability of trucking companies to acquire insurance and the difficulty in retaining and renewing insurance coverage.

On November 20, the Commission decided to exempt from regulation movements made under railroad common carrier tariffs that subsequently became subject to a contract when parties intended a contract rate to apply.

On December 27, The Commission exempted from regulation railroad securities issued under 49 U.S.C. 11301, equipment trust certificates and securities, and obligations assumed by Class II and III railroads, and streamlined procedures for security issuance by Class I railroads. On December 30, the Commission decided to clarify and streamline its procedures for offers of financial assistance in rail abandonment proceedings. December also saw the Office of Transportation Analysis release a staff report on the impact of the Commission's Trailer-on-Flatcar/Container-on-Flatcar (TOFC/COFC) exemption on railroads and the shipping public. One significant finding of the study was the record growth experienced by TOFC/COFC traffic in 1982-84 following its 1981 exemption from regulation. Shippers revealed to the Commission that the principal attraction of TOFC/COFC service was the availability of favorable rates.

The Office of Transportation Analysis also prepared in December a special report for Senator Larry Pressler (R.-S.D.) on 550 railroad rate contracts that applied from South Dakota origins, and completed a draft report on the impact of joint-rate and reciprocal switching cancellations that is expected to be released in early 1987. The report's results are based on shipper response to a mail survey, and address traffic shifts, cost, rate, service, and efficiency impacts resulting from joint-rate or reciprocal switching cancellations.

On the first working day of January 1986, the Commission suspended further railroad car-hire charge updates upon its acknowledgement that increased car-hire charges would be counterproductive during the continuing period of car surpluses. On January 6, the National Trails System Act Amendments of 1983 were implemented allowing use of abandoned rail lines for recreational trails, subject to future

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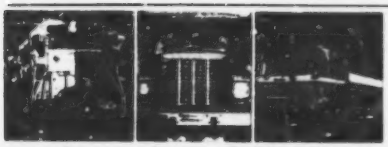

reversion to rail use. On January 15, the Commission adopted final rules exempting from regulation virtually all acquisitions and operations under 49 U.S.C. 10901. The exemption's simple procedure should facilitate service continuances on rail lines.

On January 21, the Union Pacific Corporation withdrew its notice of intent to acquire control of the Missouri-Kansas-Texas Railroad Company (MKT) after MKT's tender offer for certain outstanding securities had failed. Also in January, the Commission modified its contract filing regulations and published proposed new rules for independently filed rail common carrier tariff rates to allow rate decreases to be filed on one day's notice instead of 10 days' notice. During this same month, the Commission issued a report entitled, "The Effect of Abandonment of the Hillsboro Branch Boston and Maine Railroad Upon the Historical Integrity of the Monadnock Paper Mills," the Commission's first National Historic Preservation Act analysis of a non-railroad owned property.

On February 7, the Commission served a notice of proposed rulemaking that requested comments on whether a new calculated Cost Recovery Percentage (CRP) should be adopted to replace the CRP currently in use, and on February 10 the Commission adopted several new accounting standards recently issued by the Financial Accounting Standards Board, the accounting profession's rulemaking body, to assure that the Commission's accounting systems remain current with accounting standards used by other industries. On February 14, the Commission's former Office of Legislation and Governmental Affairs and the former Office of Public Affairs were merged into the new Office of Legislative and Public Affairs in an effort to combine, streamline, and improve related communications functions. On February 26, the Commission unanimously voted to adopt its final rulemaking implementing its guidelines covering Section 504 of the Vocational Rehabilitation Act of 1973, as amended.

In March, The Commission's former Office of Special Counsel and its former Small Business Assistance Office were combined to establish the new Office of Public Assistance based on the Commission's belief that a single source for public interest information and assistance would foster the most productive use of staff talents and varied areas of expertise. In assuming the responsibilities previously assigned to the Office of the Special Counsel, the Small Business Assistance Office, and the Commission's State/Community Affairs Liaison function, the new Office of Public Assistance continued to assist the Commission and the general public in representing the public interest relative to the Interstate Commerce Act and related statutes. The resulting enhanced efficiencies in the functions previously performed by the combined offices have proven beneficial to both the public and the Commission itself.

A staff report providing information and data on changes in the structure and performance of the motor carrrier industry since passage of the Motor Carrier Act of 1980 was also released by the Commission during the month of March. This report, for which production is an ongoing activity for the Office of Transportation Analysis, focused on the impact of the reduced economic regulation and the increased competition in the motor carrier industry brought about

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by the Act. On March 20, the Commission adopted revised rules that reduce the paperwork required for "special docket" cases involving amounts of less than $10,000.

On April 18, the Commission served the first Environmental Impact Statement in over 10 years involving a water carrier proceeding. On April 22, the Commission issued interim rules to provide criteria to govern motor carriers of property and passengers when filing applications to self-insure bodily injury and property damage claims. As an example, the May Trucking Company was granted authority to self-insure under the Commission's interim rules, subject to certain conditions. In a decision served on April 23, the Commission found, in a declaratory proceeding, the transportation of carpet between points within Texas, following a prior movement from a point in Georgia, to be part of a continuous interstate movement subject to the Commission's jurisdiction and lawfully performed under a storage-in-transit tariff provision. On April 24, the Commission conducted training for its headquarters managers and supervisors relative to handicapped workers.

In May of the past fiscal year, the Commission requested comments on modifications to rail contract procedures. During fiscal year 1986, the Commission's Office of Transportation Analysis had completed the computerization of railroad Contract Rate Summary data, and in the month of May a data backlog of over 10,000 contract summaries for 1984 and 1985 were placed in the system for use by the public and for special Commission reports. At the close of fiscal year 1986, 43,906 contracts had been filed with the Commission. Also in May, the Office of Transportation Analysis submitted to the U.S. General Accounting Office (GAO) a special study of 222 grain contracts applying from points in Kansas and North Dakota for use in a GAO audit of U.S. Department of Agriculture grain shipments. In an open voting conference held in early May, the Commission voted to adopt a policy statement holding that, in the post-Motor Carrier Act environment, the filed-rate doctrine does not necessarily bar equitable defenses.

Also in May, the Commission issued a notice of proposed policy to investigate the feasibility of using the principles of Constrained Market Pricing (CMP) to regulate the rates charged by railroads for transporting non-coal commodities of captive shippers. The Commission is also investigating whether CMP is appropriate to use in regulating rates charged small shippers of captive coal.

In June, reacting to concerns over Southern Pacific Transportation Company's (SP) financial strength and competitive ability, the Commission removed the "Central Pacific" conditions imposed on SP in 1923, except for one condition designed to protect the Denver and Rio Grande Western Railroad Company's marketing ability on the West Coast. On June 13, the Commission requested comments on the best approach to monitor recyclable rate increases. On June 18, in a matter related to the Santa Fe Southern Pacific's proposed merger plans, a supplement to the Commission's environmental assessment was served in response to comments by the U.S. Environmental Protection Agency on potential environmental impacts from the merger on communities in California. In an open voting conference held

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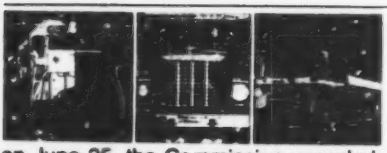

on June 25, the Commission repealed its regulations governing the leasing by motor carriers of equipment and drivers to private carriers and shippers, and eliminated the requirement that lease agreements entered into by unregulated lessors of equipment with private carriers or shippers be for a minimum period of 30 days.

Finally in June, the Commission sought comments on the validity of its existing revenue adequacy standard for railroads (*i.e.*, rate of return on net investment equal to the railroad industry's cost of capital). This request for comments was issued as a result of the Commission's May 1986 finding that the existing standard appeared to be flawed and that a broad-based reexamination of the manner in which it measures and determines revenue adequacy was necessary.

On July 14, the CSX Corporation applied to the Commission for control of the Sea-Land Corporation, including its motor carrier subsidiaries, Sea-Land Freight Service, Inc., and Intermodal Systems, Inc. On July 24, the Commission voted in open conference to deny the Santa Fe Southern Pacific Corporation's application for control of Southern Pacific Transportation Company, and voted to require divestiture of either SP or the Atchison, Topeka and Santa Fe Railway Company.

During July, the Office of Transportation Analysis began an in-depth study of short line railroads. Because of the significant growth in the number of short lines and their increasingly important role in transportation, this Office developed a profile of short lines that had begun operations following enactment of the Staggers Act. The Commission continues to collect information with emphasis on labor issues and short lines. Also during July the Office of Transportation Analysis furnished the U.S. Department of Transportation (DOT) with annual railroad abandonment data for the past three years, as well as data concerning potential future abandonments, for use in the DOT's State Assistance Funding Program.

On August 1, the Commission reorganized and condensed its field operations into three regional and 19 field offices. In early August, the Commission considered proposed changes in railroad general increase procedures and decided that, in the future, maximum rate levels would be linked directly to the quarterly Rail Cost Adjustment Factor (RCAF), and that reductions in maximum rate levels would be required when the RCAF decreased. Additionally, the Commission voted to establish a system of credits to hold down maximum RCAF rate levels in order to offset the effect of the severe drop in fuel prices that occurred in early 1986, and to correct the RCAF for errors in forecasting. The Commission also held, in an open voting conference, that certain utility coal rates exceeded a maximum reasonable level and awarded millions of dollars in reparations.

In September, an agreement between shippers and railroads over private tank car allowances was adopted by the Commission in a public conference. On September 12, according to an earlier public vote, the Commission issued new regulations allowing mileage charges and car-hire reclaims on empty rail boxcar movements, unless superseded by private agreements, and also issued an exemption from regulation for boxcar movements except for trafic originating or terminating on Class III railroads'

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lines. On September 25, a second notice was filed relative to the Union Pacific Corporation's intent to acquire control of the Missouri-Kansas-Texas-Railroad Company, and the proceeding was reopened. Also in this month, the Commission exercised its authority to expand the zone of rate freedom (ZORF) which, prior to its action, had permitted motor common carriers of property and freight forwarders to reduce or increase rates within a 15-percent zone without Commission interference. The Commission adopted final rules which increased the zone by 5 percent on the effective date of the rule change, and again each year on the anniversary of the effective date, in the absence of Commission action to the contrary.

During the month of September, the Commission's Office of Transportation Analysis prepared the third printing of "Guidelines for Evaluating the Feasibility of Short Line Operations," a brochure that has been extremely popular with members of the shipping public and that has had over 8,000 copies printed. Also in this month, the Commission's Office of Public Assistance worked at issuing an updated version of the former Small Business Assistance Office's October 1985 publication entitled "So You Want to Start a Small Railroad." This booklet, which provides information on Commission procedures for obtaining approval to operate a railroad, was revised to include information on exemption procedures.

In September, the Office of Public Assistance additionally undertook the updating of a December 20, 1984, report entitled "Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act" to reflect new regulations and case law. The publication covers all phases of rail abandonment and is intended to help state and local governments, shippers, community groups, and individuals gain a general understanding of the Commission's rail abandonment procedures. It is expected that this booklet will be available for public distribution at the beginning of fiscal year 1987.

On September 30, Union Pacific Corporation applied for Commission approval of the acquisition of control of Overnite Transportation Company, a major motor carrier. Also on that day, the U.S. Court of Appeals for the D.C. Circuit remanded the Commission's first attempt to authorize a major motor carrier acquisition by a railroad that involved the Norfolk Southern Corporation's acquisition of North American Van Lines. Finally in September, the Office of Transportation Analysis began a monitoring study to assess the effects of exempting rail boxcar traffic on shippers and carriers. This study is expected to be completed in approximately one year.

During fiscal year 1986, the Commission held a total of 14 open voting conferences concerning a variety of transportation issues and proceedings, and reviewed its docket and reactivated or closed dozens of pending cases to ensure timely decision making.

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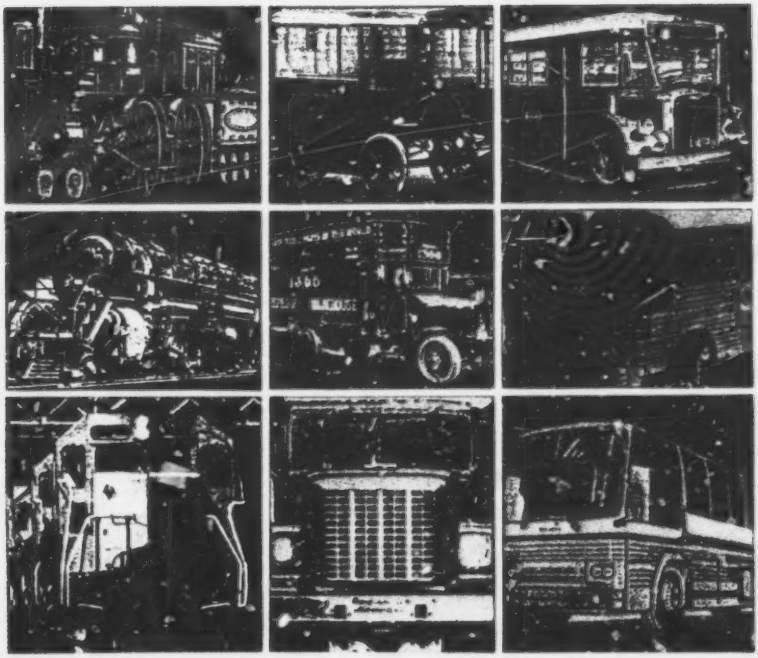

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LEGISLATION

Legislative Recommendations

During fiscal year 1986, a wide variety of transportation-related issues were examined by Congress, and the Commission participated in this process by providing testimony at Congressional committee hearings, written comments on proposed legislation, and background information on Commission activity. Once again, the focal point of Congress' attention to transportation issues was oversight of the major deregulation legislation enacted in the 1980's. In addition, Congress considered proposals to address problems that some parties had experienced since reform legislation was enacted.

Congressional interest in the Commission's activities was most intense in the area of railroads. Several committees actively considered railroad legislation. These bills proposed substantial revisions to the Staggers Rail Act of 1980, and were designed to address complaints raised by shippers. The Commission played an active part in this debate by presenting testimony, responding to questions regarding implementation of the Staggers Act, and by providing detailed analysis of proposals before Congress. The Commission also provided information on actions it had already taken or had under consideration which addressed concerns reflected in the legislation. The 99th Congress adjourned without passing major revisions to the Staggers Act. Provisions dealing with the disclosure of the terms of contracts for the rail transportation of agricultural commodities and the Commission's boxcar car hire and car service proceeding were enacted as part of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.[1] The Commission anticipates continued interest in railroad legislation in the 100th Congress.

Congress reviewed the implementation and effects of the Motor Carrier Act of 1980 and the Household Goods Transportation Act. It also considered legislation to further deregulate the trucking industry[2] and held oversight hearings on the Bus Regulatory Reform Act of 1982. The Commission testified regarding its implementation of these Acts and provided information on their effects.

The Commission testified on deregulation of the freight forwarder industry as the House examined a bill passed by the Senate in 1985. The House passed legislation on this subject on September 30, 1986. After the close of the fiscal year, the President signed S. 1124, the Surface Freight Forwarder Deregulation Act, on October 22, 1986.[3]

The Commission also participated in Congressional hearings investigating the liability insurance crisis. It submitted information regarding its knowledge of the problems of availability and affordability of insurance for trucking and bus companies, and regarding actions it had undertaken to address these difficulties. The Commission also took part in hearings which examined motor carrier safety and the Commission's safety-fitness determinations in motor carrier licensing proceedings.

A more detailed description of the Commission's activities before Congress during fiscal year 1986 is provided in the following sections.

---

[1] P.L. 99-509.

[2] S. 1711 and H.R. 3629, the Trucking Deregulation Act of 1985, and S. 2240, the Trucking Competition Act of 1986.

[3] P.L. 99-521.

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Railroads

Staggers Act Oversight—The Commission participated in the annual oversight hearings on the Staggers Act by testifying before the Senate Committee on Commerce, Science, and Transportation on November 1, 1985, and before the House Energy and Commerce Committee on February 6, 1986. In addition to its testimony, the Commission submitted a table listing the status of proceedings conducted in implementing the Act, a summary of each of the proceedings, a summary of all litigation involving the Staggers Act, and a list indicating the status of all cases filed under Section 229 (the "savings" provision) of the Act.

The Commission stated that the Act and its implementation had been generally successful in removing unnecessary regulation, encouraging efficient carriers to earn adequate revenues and to respond quickly to satisfy shippers' changing needs, and balancing the interests of the parties in accordance with the goals of the Staggers Act.

The Commission testified that the Act had had a positive effect on the financial condition of the nation's railroads. Class I railroads reported a substantial improvement in earnings in 1984. Rail industry employment totalled 291,339 as of November 1985 compared to average employment levels of 324,696 employees for the year 1984 and 480,410 employees for the year 1980. While the overall rate of return on investment (ROI) was still far below adequate levels, the rail industry reported a ROI of 5.92 percent in 1984, the highest in 40 years.

On the subject of contract rate filings, the February testimony noted that since the passage of the Act, over 34,000 rate and service contracts had been filed with the Commission. The Commission receives about 1,000 new contract filings per month from railroads and shippers of all sizes covering virtually every commodity. The Contract Advisory Service created by the Act continues to provide advice and assistance to shippers and railroads on contract matters, and is the focal point in the Commission for contract information and technical assistance.

With regard to joint-rate and reciprocal switching cancellations, the Commission reported that its Office of Transportation Analysis was nearing completion of a study of these matters. The ICC had also instituted several proceedings to address some of the perceived problems in the area of competitive access. One of these proceedings covered competitive access standards[4] in which the Commission adopted, with minor modifications, a joint shipper-railroad proposal for rules to govern the Commission's handling of the cancellation of through routes and joint rates, and the prescription of through routes, joint rates, and reciprocal switching.

The Commission described its "Constrained Market Pricing" guidelines for determining the maximum reasonable rate level that rail carriers may charge for the transportation of "captive" coal traffic.[5] In adopting these final coal rate guidelines, the Commission made significant changes to its interim guidelines in response to certain shipper concerns.

The Commission emphasized that effective competition is the key to the

[4]Ex Parte No. 445 (Sub-No. 1), *Intramodal Rail Competition*, *1 ICC 2d 822 (1985)*.
[5]Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines*, 1 ICC 2d 520 (1985).

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success of the Staggers Act and its implementation. An environment where flexibility, efficiency, and adequate revenues are encouraged will promote such competition, and the Commission is implementing the Act with this in mind while continuing to provide protection to captive shippers against unreasonable rates.

In the testimony presented on February 6, 1986, the Commission also briefly addressed a proposal to eliminate the agency. The Commission had voted not to appeal the fiscal year 1987 passback from the Office of Management and Budget (OMB) of zero ($0) after reaching an understanding with OMB that, in the event authorizing legislation to sunset the Commission was not passed, a contingency budget sufficient for the performance of current Commission responsibilities was to be included in President Reagan's budget request. The Commission testified that it continued to support legislation to eliminate, or substantially reduce, the economic regulation of motor property carriers, freight forwarders, water carriers, and brokers, yet it found that some rail oversight functions must be continued.

Competitive Access—On October 10, 1985, the House Committee on the Judiciary held a hearing on H.R. 1140, a bill to amend the Sherman Antitrust Act.[6] The Commission testified on the issue of competitive access and the specific provisions of H.R. 1140. The bill would have restrained rail rates for bulk shippers by requiring a railroad to allow trackage rights over its lines to another railroad in order to permit that carrier to serve shippers on that line. If the railroad owning track denied use of its facilities on "reasonable" terms to such shippers or another railroad, the owner carrier would be in violation of the Sherman Act and also would be limited in the freight rates it could charge.

The Commission's testimony expressed its opposition to the bill based on the practical problems it could create, as well as its failure to reflect the basic economic policies of the Staggers Act and the balance that was intended in that Act. The Commission's statement explained that the bill could result in a nationalized trackage system for bulk commodities and the artificial control of track rental prices. H.R. 1140 did not address the effect of trackage rights on the efficiency of carrier operations, questions of liability for accidents or misuse, or the labor implications of diverted traffic. The bill assumed that intramodal competition was the only effective constraint on rail pricing, and its use of "reasonable terms" did not allow for the considerations of demand elasticity, differential pricing, or revenue need. The treble damages that would be made available by H.R. 1140 could have rapidly reduced interest in Commission remedies and could have made rail carriers very reluctant to pursue efficient policies if there were any opposition to their operational methods.

The Commission also noted that there were two rulemaking proceedings pending before it that directly addressed the issues raised in H.R. 1140, but which were more appropriate vehicles for easing of competitive-access standards than the provisions of the bill.[7] The Commission urged the Committee to give the new rules an oppor-

[6] 15 U.S.C. 1 et seq.

[7] Ex Parte No. 445 (Sub-No. 1), *Intramodal Rail Competition* and Ex Parte No. 320 (Sub-No. 3), *Product and Geographic Competition.*

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tunity to work prior to the enactment of any legislation such as H.R. 1140.

On June 5, 1986, the Commission again testified in opposition to H.R. 1140 during a hearing held by the House Energy and Commerce Committee. The Commission's testimony commented on the lack of need for the legislation, its possible adverse effect on existing Commission regulation, and the problems inherent in the dual regulatory systems it would create.

The Commission did not believe that there existed a need for the passage of new industry-specific antitrust legislation such as H.R. 1140. The Commission testified that it has attempted to maintain a proper competitive balance in its Staggers Act implementation.

The Commission stated that H.R. 1140 would have largely supplemented the Commission's rate regulation in a manner that would undermine the long-term prospects for adequate investment in the rail industry. The antitrust remedy proposed by the bill also might have created contradictory findings by the Commission and the courts.

On March 4, 1986, the Commission testified before the Senate Committee on the Judiciary on S. 447, a bill to amend the Sherman Act regarding rail carriers. The Commission opposed that bill because it would have created conflicting regulatory regimes, would have had a negative impact on the structure of the rail system, and could have a far more extensive reach than its authors might have anticipated.

The Commission stated that a number of actions that it had recently taken were aimed at reducing the tensions over competitive access. These actions represented a solution to the access problems that would not compromise the soundness of the rail industry's economic recovery.[9]

At the close of the fiscal year, neither H.R. 1140 nor S. 447 had been passed by Congress. The House Judiciary Committee reported H.R. 1140 on April 24, 1986. The House Energy and Commerce Committee filed an adverse report on the bill on July 15, 1986. The Senate Judiciary Committee did not act on S. 447 before the 99th Congress adjourned *sine die*.

Consumer Rail Equity Act—On February 21, 1986, the Commission testified at a hearing held by the Surface Transportation Subcommittee of the Senate Commerce, Science, and Transportation Committee on S. 477, the Consumer Rail Equity Act. S. 477 was intended to enhance rail competition and to ensure reasonable rail rates in the absence of effective competition.

The Commission testified that the proposed legislation would have increased regulatory costs and burdens without commensurate improvement in the delivery of rail services. It reiterated its position that the Staggers Act is functioning well. However, the Commission recognized that the provisions of S. 477 reflected sincere criticisms of the initial implementation of the Staggers Act. The Commission explained that it had sought to adjust its initial implementation rules where developments had shown the rules had not been working satisfactorily, and it had promoted negotiated reconciliations among disputing parties whenever possible. This is a continuing process, and the Commission reported further refinements were under active consideration, particularly in the area of revenue

[9] For example, Ex Parte No. 445 (Sub-No. 1), *Intermodal Rail Competition*.

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adequacy. The Commission expressed confidence that its maximum coal rate standards comported with Staggers Act intentions, and that experience with the implementation of the standards would verify the validity of Commission action.

The Commission then discussed specific provisions of S. 477. The Commission outlined recent changes to its market-dominance standards adopted in response to an agreement reached by the Association of American Railroads, the National Industrial Traffic League, and other shippers. A number of the revisions to the market-dominance standards contained in S. 477 were reflected in the Commission's policy.

The Commission commented on the proposed rate reasonableness provisions of S. 477, which would have placed the burden of proof on the railroads in all cases and would have prohibited the use of the Commission's coal rate guidelines as a standard for maximum rate reasonableness. The Commission's statement defended the Constrained Market Pricing (CMP) approach as the best methodology it had evaluated to date for establishing rate reasonableness. The ICC noted that, at least preliminarily, the CMP approach had been sustained by the courts. The Commission's testimony also pointed out specific issues that the Commission staff had been directed to address, including the small-shipper problem of the expense involved in developing and participating in railroad rate cases and the issue of rate reasonableness standards for non-coal commodities. A notice of proposed policy in this area was issued in May 1986.[9]

[9]Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings*, served May 21, 1986.

The standards and procedures for determining revenue adequacy were discussed at length. S.477 would have retained the most important facet of the existing rules—reliance on the cost of attracting new investment—as the standard for determining revenue adequacy. However, the bill proposed several methodological changes in the calculation of revenue adequacy under the cost-of-capital standard, and the ICC's testimony provided detailed comments on each of them. The Commission agreed that its standards for determining revenue adequacy had not produced a realistic picture of the financial condition of the rail industry. The Commission stated that it had determined that the standards had to be reassessed, and that it was awaiting the completion of an options paper from its Bureau of Accounts. Several of the options under consideration were similar to those proposed in S. 477. For these reasons, the Commission recommended that the revenue adequacy question be addressed through the administrative process rather than through legislation.

The Commission discussed rules on competitive access and reciprocal switching that it had adopted recently. While there were significant differences between the provisions of S. 477 and the Commission's new rules, the testimony stated that there were also significant similarities. The Commission emphasized that its new rules were the product of a negotiated compromise between many of the railroads and important shipper groups, and that it believed the rules would work satisfactorily. The Commission also expressed concern that mandatory terminal and trackage rights would threaten new investment in rail facilities.

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In the railroad abandonment area, the Commission supported a provision of S. 477 which would have provided for a one-year moratorium on a railroad's ability to resubmit an abandonment request that had once been denied. The Commission outlined the practical problems it had perceived with the provisions requiring an oral hearing upon request of a local protestant. In discussing a provision in the bill that the Commission rely on line-specific financial data (rather than system-wide or industry-wide data) in making abandonment decisions, the Commission questioned whether the cost of developing such data in all instances would be worth the limited improvement in accuracy that might be achieved.

The Commission reiterated its support for the Staggers Act and expressed concern that the progress the railroad industry had made could be jeopardized by passage of S. 477. The Commission emphasized, too, its recent attempts to accommodate the legitimate interests of both shippers and railroads, and noted that its actions in the areas of competitive access, market dominance, revenue adequacy, and relief for small shippers were evidence that progress had been and would continue to be made at the administrative level.

The Consumer Rail Equity Act (S. 477 and its House companion, H.R. 4096) were still under active consideration at the close of fiscal year 1986. Although neither bill reached the House or Senate floor for debate before the 99th Congress adjourned on October 18, 1986, it is likely that similar legislation will be reintroduced in the 100th Congress.

Short Line Railroads.—On July 25, 1986, the Commission testified before the Senate Commerce Committee on the short line segment of the railroad industry. The testimony discussed the conditions prevalent in this segment of the industry, the various actions the Commission had taken to expedite the creation of short line railroads, and the public assistance provided by the Commission to potential and existing short line carriers. The Commission's statement also presented the results of an informal survey that the Commission had conducted regarding short lines.

The Commission stated that changes in the regulatory environment, especially those brought about by the Staggers Act, have been instrumental in the significant growth in the number of small railroads which have begun operations. The Commission testified that a majority of these railroads have been formed to take over abandoned lines, lines about to be abandoned, or lines that major rail systems had found to be unprofitable or marginally profitable.

Regulatory changes have made it easier for major carriers to abandon unprofitable lines, and have provided opportunities for shippers, states, or entrepreneurs to operate them. Also contributing to the development of short lines has been the large number of rail mergers within the last decade. Parallel or little-used lines become subject to abandonment following the consummation of mergers. Finally, state rail planning and financial support were said to have assisted in the creation of new short line carriers. The Commission testified that the most significant aspect of short line operations was that they were filling a transportation need more profitably and more effectively than trunk line carriers. Because they fill a niche in the rail transportation

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market, short lines are beneficial to shippers and local economies.

The Commission outlined several actions taken to expedite the creation of short line railroads. Because many unprofitable lines of Class I carriers are sold to short line railroads, the Commission has removed numerous regulatory obstacles which otherwise impede the smooth transfer of operations. For example, new rules were adopted freeing most short line acquisitions and operations from prior-approval requirements.[10] Under current regulations, a transaction may be consummated within 7 days of its filing with the Commission.

The Commission also demonstrated its acknowledgement of Congressional concern about joint-rate cancellations that affect smaller short line railroads. Special procedures were adopted requiring 45-day notice prior to the filing of a proposed joint-rate or route cancellation and, upon demand of any connecting carrier, an explanation and justification for the proposal.[11]

The Commission currently assists potential and existing short line carriers by publishing booklets that examine the economics and the physical and legal considerations of starting a railroad. These booklets also contain information on procedures for obtaining the Commission's approval to operate a railroad, and are available along with other information from the Commission's Office of Public Assistance.

The Commission testified that it had adopted a general policy against imposing labor protection in the formation of short lines. Since replacement service offered by short lines has a beneficial effect on rail service and rail employment, the Commission stated its belief that the imposition of labor-protective conditions could retard the development of replacement service and could accelerate job loss in the industry. Nevertheless, the Commission continues to monitor short line operations and their impact on labor.

[10]Found at 49 C.F.R. 1150.31.

[11]Ex Parte No. 445 (Sub-No. 1), *Intermodal Rail Competition.*

Trucking Companies

Motor Carrier Oversight—On November 7, 1985, the Commission presented testimony before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation on implementation of the Motor Carrier Act of 1980. In addition to its statement, the Commission included a list providing further information on Commission proceedings; earnings and traffic volume data of the nation's largest motor carriers of property; a list of studies concerning the impact of motor carrier deregulation on small communities; data on industry concentration; and a list of intermodal cases processed by the Commission since July 1980.

The Commission testified that the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act, and the Commission expressed strong support for further deregulation of the industry.

The Commission highlighted various indicators to show that the Motor Carrier Act's reforms were working. At the time of the hearings, more than 32,000 new carriers had received motor carrier operating authority since the Act's effective date. Shipper satisfaction with service levels was said to have remained high, and complaint levels were shown to have declined. The

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Commission cited reports by 100 of the nation's largest trucking companies for the 12 months ending June 30, 1985, as having increases in revenues and tonnage hauled, but decreases in net operating income and net income as compared to the same period of 1984. The reason for the overall decline in earnings was attributed to the large decreases in earnings reported by a few carriers. With respect to rates, a decline was noted in the reported number of independent actions published by trucking rate bureaus for fiscal year 1985. That decline from the fiscal year 1984 level was attributed to the fact that many motor carriers had published discount provisions and negotiated rates in their individual tariffs, rather than in bureau publications.

In addition to providing general information on the implementation and effects of the Act, the Commission discussed a number of topics including intermodalism and actions taken to facilitate this trend, concentration in the industry, the use of discount rates, trucking industry employment, and the Commission's enforcement activities.

The Commission expressed its belief that there is a need for further deregulation of the motor carrier industry and that it strongly favors legislation which would eliminate economic regulation of motor carriers of property.

Household Goods Oversight—During fiscal year 1986, the Commission testified at two oversight hearings held on the Household Goods Transportation Act of 1980. The first was before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on October 21, 1985. Identical testimony was presented to the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation on November 7, 1985.

The Commission testified on the positive impact of the Act. The testimony outlined implementation efforts, including a prompt review and revision of all operational regulations for household goods carriers, elimination of unnecessary regulations, and reduction of paperwork. The Commission stressed that the only requirements eliminated were those which reduced paperwork without jeopardizing consumer protection. It also reported on the progress that had been made in a further review of its regulations to determine if additional requirements could be eliminated in light of experience gained under the Act. In an effort to further reduce the regulatory burden for household goods carriers and all motor carriers of property, the Commission proposed to substantially modify its accounting and reporting requirements.[12]

The Commission discussed measures taken with regard to agents of household goods carriers and industry programs to settle disputes with shippers. The Commission also provided an update of an ongoing study being conducted by its Office of Transportation Analysis on the impact of the Household Goods and Motor Carrier Acts on household goods carriers.

The Commission reported that, since passage of the Act, carriers were offering a wide variety of customer service options. For example, the offering of guaranteed service dates with liquidated damages to shippers in the event of delayed service is now a

[12]Docket No. 38904, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Property*, notice of proposed rulemaking served February 20, 1986.

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common practice. The Commission testified that the ICC's complaint statistics showed a dramatic decrease in the number of complaints filed against household goods carriers since passage of the Act. It also presented data on the financial condition of the industry which concluded that household goods carriers fared much better during the recession than did other motor carriers of property, rebounded rapidly after the recession, and continued to improve their financial performance.

The Commission stated that it remains dedicated to implementation of the Household Goods Act in accordance with Congressional intent, that it would continue to eliminate unnecessary regulations, and that it would strive to encourage flexible, responsive, and innovative pricing in this segment of the trucking industry.

Safety Fitness—On two occasions during the fiscal year, the Commission testified on the issue of motor carrier safety fitness. On October 29, 1985, the Commission testified before the Senate Committee on Commerce, Science and Transportation, and on March 19, 1986, it testified before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation. The Commission's testimony was identical to earlier testimony presented September 12, 1985, before the House Government Activities and Transportation Subcommittee of the House Committee on Government Operations. It discussed current procedures for determining the safety fitness of applicants for operating authority and the steps that the Commission was taking to implement the safety fitness provisions of the Motor Carrier Safety Act of 1984.

The Commission's statement described the coordinated activities of the Commission and the Bureau of Motor Carrier Safety (BMCS) at the Department of Transportation (DOT). The Commission also explained its procedures for making safety-fitness determinations in cases involving applications for authority.

The testimony described the Commission's activities conducted in cooperation with DOT in its development of the safety fitness standards required by Sec. 215 of the Motor Carrier Safety Act. The Office of Proceedings had conducted a thorough evaluation of Commission licensing and fitness regulations to identify those rules and practices that must be revised to conform with the new safety-certification procedures. The Commission stated that the actual revision of its regulations and practices will follow the DOT's implementation of final rules in this area.

The Commission testified that its safety-fitness responsibilities do not necessarily end with the granting of a certificate to operate as a motor carrier, and noted that a continuing safety monitoring system is presently in place under the 1982 Memorandum of Understanding and Agreement reached between the Commission and the DOT. The Commission stated that the enhanced safety monitoring conducted under the safety-fitness standards mandated by the Act would permit it to continue to rely principally upon the BMCS to petition for revocation of the authorities of non-compliant carriers. However, the Commission indicated that it would consider instituting revocation proceedings on its own motion if it were alerted to a carrier's unacceptable

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safety record by other means, and if this information were verified by BMCS.

The Commission expressed concern for the safety of motor carriers operating on the nation's highways, and committed itself to ensuring that carriers operating under the Commission's authority continue to provide transportation that is safe and economical.

Buses

The Commission testified at two oversight hearings on the Bus Regulatory Reform Act of 1982. On October 21, 1985, the ICC was before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation, and on November 7, 1985, it was before the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation. The testimony discussed the Commission's implementation of the Bus Regulatory Reform Act, the Act's impact on the intercity bus industry, and other areas affected by the legislation. Three areas discussed were eased entry, rate flexibility in conjunction with limitations on antitrust immunity, and exit policy.

The Commission reported that the Act's entry provisions have resulted in significant numbers of new entrants and expanded service. The Commission identified two entry issues that had arisen since enactment of the Bus Act. One concerned the granting of intrastate authority along interstate routes, and the other involved applications by government-subsidized carriers to operate charter and special services.[13]

The Commission's testimony also discussed rates, including discount programs. In reporting on the exit freedoms allowed by the Bus Act, the Commission provided information on the disposition of 46 petitions for discontinuance of intrastate bus service filed since enactment of the Bus Act. The Commission described its efforts to assist small carriers and local governments in consummating new service or in searching for alternatives to lost passenger bus service. The testimony also addressed a study of intercity bus terminals and stations that was conducted with the Department of Transportation and provided data on the financial condition of the industry.

The Commission reported on problems that bus companies were having in securing liability insurance at affordable rates. The Commission indicated that the number of insurance cancellation notices it had received and the subsequent warning letters it had issued had risen dramatically. The Commission stated that its Office of Compliance and Consumer Assistance would continue to analyze the reasons for the increases to determine what could be done to alleviate the insurance problem confronting the motor carrier industry. The Commission additionally stated that it had recently granted a special-tariff application to file tariffs containing surcharges to offset insur-

[13] These two issues were addressed by amendments to the Bus Regulatory Reform Act which were passed on August 15, 1986 by the House of Representatives as Sec. 330 and 331 of H.R. 3129, a highway funding bill. The companion Senate bill, S. 2405, did not contain similar provisions. However, this legislation died when House and Senate conferees failed to reach agreement on a compromise highway funding package before the 99th Congress adjourned *sine die*.

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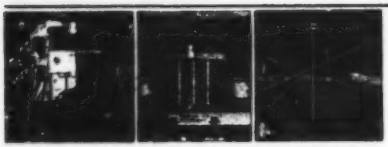

ance costs on 10 days' notice instead of the usual 30 days' notice.[14]

In conclusion, the Commission testified that a more competitive environment has developed in the bus industry, and the industry as a whole is now responding positively to the operational freedoms provided for in the Act by affording bus passengers improved price and service options.

Other Issues

Freight Forwarder Deregulation—On June 18, 1986, the Commission presented testimony on S. 1124, the Surface Freight Forwarder Deregulation Act of 1985, to the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation. S. 1124 was designed to remove Commission jurisdiction over most activities of the surface freight forwarding industry, except for household goods freight forwarders which were excluded from the bill. The Commission expressed support for the bill, stating that its enactment would ensure that surface freight forwarders would be able to provide competitive and efficient transportation for the present and in the future.

The Commission outlined the administrative actions it had taken since passage of the Motor Carrier Act to reduce the burdens faced by surface freight forwarders in competing with other carrier modes. While these activities increased the flexibility of freight forwarder participation in the transportation industry, existing entry controls, rate regulation, limitations on permissible control relationships between freight forwarders and other carriers, and court intervention, among other factors, had prevented the Commission from adopting a regulatory approach that would have enhanced, to the maximum extent possible, competition and efficiency within the industry.

The Commission stated that S. 1124 would help achieve more competitive pricing and increase service options available to shippers by removing existing regulatory controls over general commodity surface freight forwarders. The changes proposed in S. 1124 were seen to enable most surface freight forwarders to operate in an unfettered manner, responsive to the forces of the marketplace, and to be held accountable to the shipping public through the state and federal court systems. The bill was also seen to allow forwarders to adapt to present and future transportation needs and marketplace realities. The Commission expressed support for these goals and the proposed legislation.

The House passed S. 1124 on September 30, 1986. The Senate had passed a slightly different version of the legislation in November of 1985. After the close of fiscal year 1986, the Senate agreed to the amendments of the House, and S. 1124 was signed by President Reagan on October 22, 1986 (P.L. 99-521).

Insurance.—The Commission testified twice before different Subcommittees of the House Public Works and Transportation Committee on motor carrier insurance issues. On October 30, 1985, the ICC was before the Surface Transportation Subcommittee, and on January 22, 1986, it was before the Investigations and Oversight Sub-

[14]Special Tariff Authority No. 85-2490, *Insurance Surcharge for Bus Companies*, served October 2, 1985. Later in the fiscal year, the Commission also adopted final rules to reduce the 30-day notice period for independent rate filings by bus companies to 1 day, Ex Parte No. MC-178, *Short Notice Effectiveness For Independently Filed Motor Passenger Carrier Rates*, _____ I.C.C. 2d _____ (1986).

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committee. The Commission also participated in a hearing on December 11, 1985, which was part of an investigation into motor carrier insurance compliance conducted by the Government Activities and Transportation Subcommittee of the House Committee on Government Operations.

In its testimony presented on October 30, the Commission described procedures in effect for ensuring that carriers comply with federal minimum bodily injury and property damage insurance requirements. The Commission explained that its role in the insurance area is two-fold: it is charged with promoting a safe and economically sound transportation industry, and it cannot issue operating authority if carriers do not obtain and maintain statutorily required insurance coverage.

Insurance companies are required to file with the Commission certificates of insurance on behalf of their insured carriers, and the Commission maintains a computerized file of those carriers in compliance with this requirement. Insurance companies must maintain insurance in effect until 30 days after a cancellation notice is received at the ICC. When a cancellation notice is received, the Commission notifies the carrier in question of the need to file evidence of replacement coverage. If no action is taken within two weeks, the Commission sends a reminder notice and has its field staff contact the carrier. If compliance does not occur before the cancellation date, the Commission's field staff takes two actions: it attempts to obtain a consent agreement under which the carrier agrees not to operate until evidence of insurance is received by the Commission, and it simultaneously recommends to the Commission's Revocation Board that a revocation proceeding be instituted. The Commission expressed its confidence in this system for ensuring compliance with insurance requirements.

The Commission's testimony also gave an assessment of the nature and extent of the problems that motor carriers and freight forwarders are encountering in purchasing and maintaining insurance at federally required levels. This information was based on an informal survey of motor carriers of property and passengers conducted by the Commission's Office of Compliance and Consumer Assistance.

The Commission commented on the particularly difficult experience of the bus industry in obtaining bodily injury and property damage insurance in 1985. Increased costs and reduced availability caused some bus lines to cease operations altogether. In response to a request from the United Bus Owners of America, the Commission approved a request reducing the notice time from 30 days to 10 days for the filing of tariffs containing surcharges to offset insurance costs.[15] In addition, the Commission reported that the American Trucking Associations had petitioned the Commission to institute an investigation to determine the extent of the insurance crisis, the economic causes behind the significant increases in premiums, and what, if any, appropriate measures the Commission might take to alleviate problems carriers were having in maintaining statutorily required insurance coverage. At the time of the hearing, the Commission had established a proceeding to consider this request.[16]

[15]Special Tariff Authority No. 85-2490, *Insurance Surcharge for Bus Companies*, served October 2, 1985.

[16]Ex Parte No. MC-178, *Investigation into Motor Carrier Insurance Rates*.

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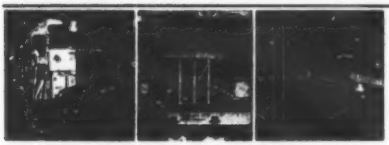

The Commission's January 22, 1986, statement contained information concerning the industry's response to the insurance crisis as reflected in rate actions filed at the Commission. The Commission's statement concluded by providing the status of a number of insurance proceedings that were pending before the Commission. Such cases included several petitions by carriers for authority to act as self-insurers for bodily injury and property damage claims and the Commission's general investigation into the insurance issue.

As a final matter, a hearing was held on December 11, 1985, by the Government Activities and Transportation Subcommittee of the House Committee on Government Operations to investigate a specific accident in which there arose some question regarding the insurance compliance of an involved carrier. The Director of the Commission's Office of Compliance and Consumer Assistance testified to provide information to the Subcommittee regarding the Commission's insurance compliance procedures and the Commission's insurance records for the carrier.

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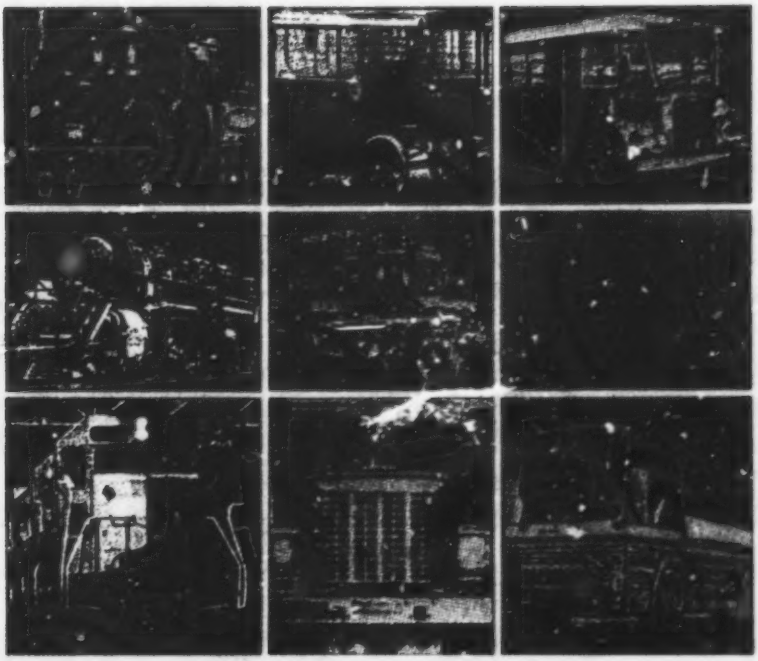

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ADMINISTRATION

Organization and Management

In fiscal year 1986, several major changes took place in the Commission's organizational structure and management as a reflection of its reduced regulatory role. The Commission's fiscal year 1986 average staff-year employment level stood at 806, a reduction of 109 from the prior fiscal year's average of 915. A total of 41,000 square feet of office space was also returned to the General Service Administration.

During the year, the number of Commissioners' offices was reduced from seven to five, and the Commission completed four other organizational changes: (1) the Commission's Bureau of Accounts eliminated all of its field positions and consolidated its headquarters staff from five operating sections to three; (2) the Office of Public Assistance was created through the merger of the former Small Business Assistance Office and the former Special Counsel's Office; (3) the Office of Legislative and Public Affairs was created through the merger of the former Office of Public Affairs and the former Office of Legislation and Governmental Affairs; and, (4) the Office of Compliance and Consumer Assistance closed 33 offices, thereby producing the current structure of 3 regional and 19 field offices.

Human Relations

The Commission's Office of Human Relations pursued its public-service mandate in the area of equal employment opportunity and human resources management. The Human Relations staff conducted seminars for managers and supervisors to heighten their awareness of the needs of handicapped staff members. A series of small counseling sessions with managers and employees were also held in an effort to increase staff awareness and understanding of co-workers who may suffer from alcohol or drug dependency. This function will continue as Merit Systems Protection Board and judicial precedents develop that will require expanded training for Commission personnel supervising or working with individuals confronting such dependency problems.

Follow-up training also was given to managers and supervisors at the Commission's headquarters and to all regional staffs on sexual harassment. In light of a recent Supreme Court ruling,[1] similar training will continue to ensure that managers are satisfactorily equipped with the skills necessary to combat and prevent instances of sexual harassment in the Commission's workplace.

Additionally, the Commission selected a collateral-duty Federal Women's program Manager and additional collateral-duty Equal Employment Opportunity counseling staff.

Commission Budget

The Commission's fiscal year 1988 budget was developed and submitted concurrently to the Office of Management and Budget and the Congress in August 1986. The budget reflected staff reductions attributable to increased efficiencies gained from reorganization actions implemented in fiscal year 1986, and to reductions in program operations consistent with projected decreases in workload. The Commission's reduced regulatory role and streamlined procedures in motor freight, bus, household goods freight

[1] *Meritor Savings Bank v. Vinson*, _____ U.S. _____, 106 S. Ct. 2399 (1986).

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forwarding, and railroad matters continues to result in budget decreases.

Fiscal Year 1986 Appropriations

Commission funding for fiscal year 1986 was included as part of a continuing resolution, Public Law 99-190, approved December 19, 1985, authorizing the following continuing appropriations:

- *Salaries and Expenses:* For necessary expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed $1,500 for official reception and representation expenses, $50,480,000, of which $2,300,000 will be derived from unobligated balances of "payments for directed rail service," provided that joint board members and cooperating state commissioners may use government transportation requests when traveling in connection with their official duties as such. This funding was reduced by $2,072,000 as required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177, Gramm-Rudman-Hollings). The net authorization for fiscal year 1986 was $48,408,000.
- *Directed Rail Service:* None of the funds provided in Public Law 99-190 were to be available for the execution of programs the obligations for which could reasonably be expected to exceed $1,000,000 for directed rail service authorized under 49 U.S.C. 11125 or any other legislation.

Salaries and Expenses Appropriation

On February 25, 1986, Chairman Heather J. Gradison and Staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the Commission's fiscal year 1987 budget request. The Chairman and staff provided testimony supporting the request to the Subcommittee on Transportation of the Senate Committee on Appropriations on March 26, 1986.

Payments for Directed Rail Service Appropriation

The last instance of directed rail service occurred between October 5, 1979, and March 23, 1980, when the Kansas City Terminal Railway Company provided service over the lines of the Chicago, Rock Island, and Pacific Railway Company. The Congress last appropriated funds for this directed service in a fiscal year 1982 supplemental appropriation.

Under the continuing resolution for fiscal year 1986, $2.3 million of the unobligated balance remaining from the Directed Rail Service supplemental appropriation of fiscal year 1982 was transferred to the Commission's Salaries and Expenses account, leaving a balance of approximately $53,000 in the Payments for Directed Rail Service appropriation account.

Since no new directed rail service is anticipated, no funds were requested for fiscal years 1987 or 1988.

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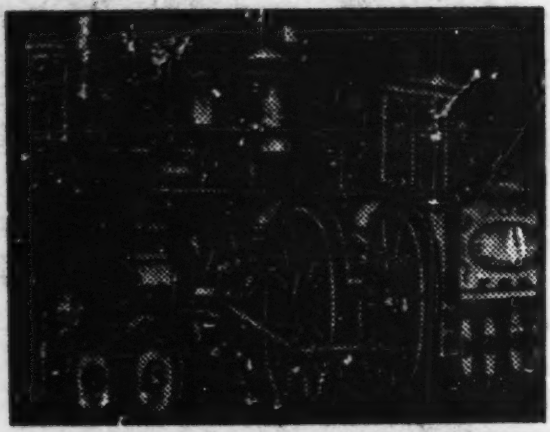

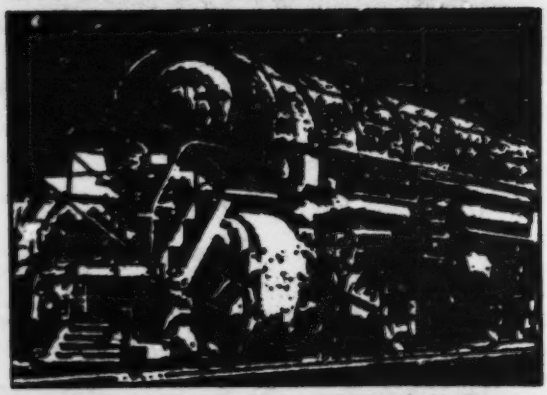

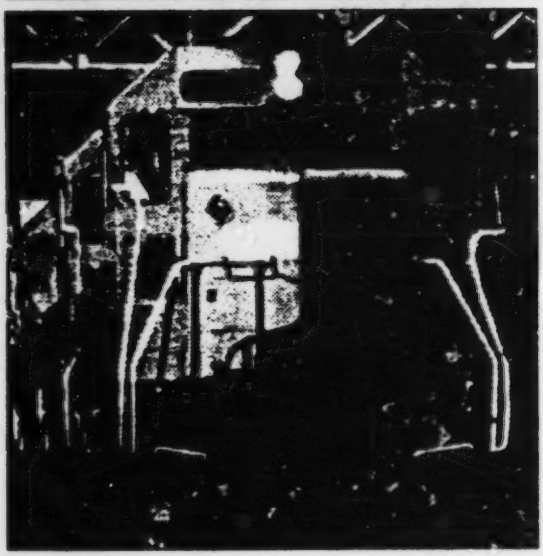

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RAILROADS

General Financial Condition

Following partial deregulation of the railroad industry brought about by the Staggers Rail Act of 1980 (Staggers Act), railroad companies have enjoyed greater freedom to compete for customers within a generally mature rail industry highly dependent on coal, heavy industry, and agriculture for much of its traffic base. Recently, however, the U.S. economy has been shifting away from the production of heavy industrial products and more towards the manufacture of lighter, high-value industrial goods and service-oriented products that are smaller and require more time-sensitive transportation and distribution. To obtain new sources of traffic in this changing economy, though, some railroad holding companies have recently acquired trucking companies or barge companies in efforts to gear their rail operations to freight markets with greater growth potential.

Much recent growth in railroad traffic has been the result of the rapid expansion of coal shipments, particularly those from Wyoming's Powder River Basin. With the exception of record levels of trailer-on-flatcar traffic, this growth in coal traffic has masked the erosion of the railroad industry's general freight traffic whose loss is primarily attributable to intense competition from the trucking industry and to the decline in the nation's heavy industries, such as steel production.

Revenue carloadings of Class I railroads rose about 1 percent in fiscal year 1986 compared to fiscal year 1985. Carloadings of coal, which accounted for over one-fourth of all rail traffic last fiscal year, fell about 1 percent. As a reflection of the generally sluggish economy last fiscal year, carloadings of motor vehicles and lumber and wood products declined 1.5 percent and 10.9 percent, respectively, while carloadings of grain registered only a slight gain during the fiscal year.

Commission data for Class I line-haul railroads for the twelve months ending March 31, 1986, and March 31, 1985, indicate that operating revenues fell 5.8 percent to $27.3 billion and that revenue ton-miles of freight declined 3.5 percent for the period. Net railway operating income for the twelve months ending March 31, 1986—excluding large calendar year-end 1985 adjustments made by the CSX Corporation and The Chicago, North Western Corporation—was $2.2 billion, a 5.6-percent decline from the same period of 1985. With the inclusion of year-end adjustments recording severance pay for employee buy-outs and the write-down of assets attributable to freight car retirements and line abandonments, net railway operating income declined 25.5 percent to about $1.7 billion in the twelve months ending March 31, 1986. Net income before extraordinary items rose by slightly less than 1 percent to about $2.4 billion with the exclusion of adjustments, but ordinary income fell 24.6 percent to $1.8 billion with adjustments included. In addition, the rate of return on net investment in transportation property decreased from 5.23 percent in the twelve months ending March 31, 1985, to 4.76 percent with the exclusion of adjustments to net railway operating income, and to 3.76 percent with adjustments included.

To counteract revenue declines brought about by intense rate competition, the railroad industry has achieved productivity gains and/or cost savings, for example, through personnel reduc-

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tions or adjustments and through declining fuel prices. Total Class I line-haul railroad employment during fiscal year 1986 declined 9.4 percent to a monthly average of 280,499 employees, compared to a monthly average of 309,638 employees during fiscal year 1985. Further, the number of maintenance-of-way-and-structure employees and maintenance-of-equipment employees declined by 9.5 percent and 9.6 percent, respectively. Since passage of the Staggers Act, Class I line-haul railroad employment has declined by about 42 percent. However, current labor work rules and compensation scales will remain in place until the next round of industry labor negotiations which will take place in 1988.

The Commission expects the Class I segment of the railroad industry to continue its efforts to reduce employment levels, and to write down unproductive assets. Traditional industry earnings patterns will be disrupted as this takes place, but the Commission anticipates that once realignment is completed, a more efficient and competitive transportation industry will emerge with the potential for improved earnings and an improved position from which to respond to the shipping demands of its customers.

Reorganizations

Under Section 77 of the Bankruptcy Act, the Commission retains jurisdiction over railroad reorganizations involving the Boston and Maine Corporation and the New York, Susquehanna and Western Railroad Company. While these reorganizations are essentially complete, several petitions were filed during the fiscal year by trustees and counsel to set maximum limits of their compensation under the Bankruptcy Act.

The only other reorganization activity during fiscal year 1986 took place in the courts, where several challenges of the sale of The Soo Line Railroad of the bankrupt Chicago, Milwaukee, St. Paul & Pacific Railroad's operations were denied. An August 1986 decision by the U.S. Court of Appeals for the Seventh Circuit leaves undisturbed the Commission's decisions in the Milwaukee acquisition proceedings.[1]

Securities

The Commission exempted from regulation a substantial number of securities issued or assumed by railroads.[2] Under regulations adopted in 49 CFR Part 1175, the exemption applies to securities issued and obligations assumed by: (1) Class II and Class III rail carriers; (2) a party acquiring a rail line under the financial assistance provisions of 49 U.S.C. 10905; and (3) any rail carrier regardless of size issuing equipment trust certificates. No filing with the Commission is needed for these types of transactions. Issuance of securities and assumption of obligation by Class I railroads and holding companies are also exempt from 49 U.S.C. 11301 subject to certain notice requirements. These transactions are exempt from further Commission action unless opposition is registered. The exemption does not apply to those securities that are directly related to applications under Section 10901 for rail construction or operation, or to applications

[1] *In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor* _____ F.2d _____ (7th Cir. 1986).

[2] *Exemption—Railroads Regulation under 49 U.S.C. 11301*, 1 I.C.C.2d 915 (1986).

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under Section 11344 for rail consolidation and mergers.

The Commission also determined that the assumption of an obligation as a guarantor of a note or notes,[3] promissory notes,[4] and letters of credit[5] are not securities subject to the Commission's jurisdiction because they are not publicly issued or traded.

Mergers and Consolidations

In a major rail consolidation decision, the Commission denied the proposed merger of the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Transportation Company.[6] Oral argument was held on May 21, 1986, and at an open voting conference held on July 24, 1986, the application was denied. While the Commissioners agreed unanimously that the consolidation offered sufficient public benefits to merit consideration of the application, the Commission decided, 4 to 1, with Chairman Heather J. Gradison dissenting, that those benefits were outweighed by adverse competitive effects so great that they could not be remedied, and that they required the application to be denied. The Commission also voted to retain jurisdiction over the proceeding pending divestiture by Santa Fe Southern Pacific Corporation of at least one of the railroads. The Commission also required the applicants to submit a divestiture plan for Commission approval.

During the proceeding, several parties expressed considerable concern over the potential loss of competition where the applicants have parallel lines in California and across the Southwest, and concern was also expressed over the possibility of changed competitive conditions to the central transcontinental corridor. Several railroads offered conditions intended to ameliorate perceived anticompetitive consequences in these areas. Federal and state governmental entities also participated in the proceeding, with the U.S. Department of Transportation urging approval of the merger and the U.S. Department of Justice seeking denial.

Subsequent to the July 1986 voting conference, the applicants filed a petition to reopen the proceeding for the purpose of considering new evidence, and requested a delay of the issuance of a decision pending receipt of the new evidence. Other parties also filed petitions to reopen, as well as related pleadings.

On October 9, 1986, just after the close of fiscal year 1986, the Commission served to the public its decision to: (1) hold in abeyance for 60 days after the issuance of its decision on the merits in this proceeding the applicants' request to reopen the record; (2) reject without prejudice to refiling after the issuance of a decision on the merits the petitions of parties other than the applicants to reconsider or reopen the proceeding; (3) deny the applicants' request to delay the issuance of the Commission's decision on the merits; and, (4) stay its order that the applicants file a divestiture plan pending the Commission's final decision on the

[3]Finance Docket No. 30711, *Missouri-Kansas-Texas Railroad Company—Assumption of Obligation—Exemption from 49 U.S.C. 11301* (not printed), served November 5, 1985, and Finance Docket No. 30712, *Missouri-Kansas-Texas Railroad Company—Exemption—Issuance of Securities* (not printed), served November 4, 1985.

[4]Finance Docket No. 30713, *Genesee & Wyoming Railroad Company—Securities Exemption* (not printed), served November 5, 1985.

[5]Finance Docket No. 30762, *Consolidated Rail Corporation—Securities Exemption* (not printed), served December 30, 1985.

[6]Finance Docket No. 30400, et al., *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company.*

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applicants' petition to reopen the record.

The Commission's written decision explaining its rationale for denying the merger was served the next day, on October 10, 1986.

In January 1986, the U.S. Court of Appeals for the Sixth Circuit affirmed the Commission's approval under the Panama Canal Act and the Interstate Commerce Act of CSX Corporation's acquisition of American Commercial Lines, Inc., and its water carrier subsidiary, American Commercial Barge Line Company.[7] During the fiscal year, the Commission instituted and completed its first oversight proceeding concerning that transaction under a condition imposed when it was approved.[8] In July, CSX applied for Commission approval to acquire control of Sea-Land Corporation and its motor carrier subsidiaries, Sea-Land Freight Service, Inc., and Intermodal Systems, Inc.[9]

In March 1986, the Supreme Court granted a petition by the Commission for review of labor protection issues arising from trackage rights transactions related to Union Pacific Corporation's control of the Missouri Pacific Railroad Company and the Western Pacific Railroad. At issue is the Commission's exemption of crew selection on trackage rights trains from the Railway Labor Act.

In response to a petition for a declaratory order, the Commission found in May 1986 that 126 engineers and trainmen formerly employed by a subsidiary of the former Pennsylvania Railroad Company were covered by the protective conditions in the Penn Central-New York Central merger. It was determined, however, that questions of seniority are to be addressed through collective bargaining.[10]

In June 1986, the Commission removed several conditions imposed on the Southern Pacific Transportation Company in 1923 when Southern Pacific acquired control of the Central Pacific Railway Company.[11] The conditions, designed primarily to protect Union Pacific's (UP) access to West Coast markets, were found unnecessary because of UP's acquisition of Western Pacific, giving it direct access to the San Francisco Bay area and northern California points. The removal of these conditions is anticipated to improve Southern Pacific's financial performance and competitive posture. One condition, however, protecting the Denver and Rio Grande Western Railroad, was retained by the Commission.

After court reversal in 1984 of a Commission rule revoking all "DT&I" conditions[12] previously imposed in rail consolidations, a case-by-case approach has been followed. During fiscal year 1986, the Commission re-

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[7]*CSX Corporation—Control—American Commercial Lines, Inc.* ____ I.C.C.2d ____ (1984), *affirmed sub nom., Crounse Corporation v. ICC*, 781 F.2d 1176 (6th Cir. 1986), *cert. denied*, ____ U.S. ____ (October 14, 1986).

[8]Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.* (not printed), served August 29, 1985.

[9]Finance Docket No. 30800 et al., *Joint Application of CSX Corporation and Sea-Land Corporation Under 49 U.S.C. 11321.*

[10]Finance Docket No. 21989, *Pennsylvania Railroad Company—Merger New York Central Railroad Company: In the Matter of Larry Zapp, et al.—Petition for Declaratory Order* (not printed), served May 13, 1986.

[11]Finance Docket No. 2613 (Sub-No. 1), *Control of Central Pacific by Southern Pacific* (not printed), served June 24, 1986.

[12]DT&I conditions are a standard set of traffic-protective conditions imposed in mergers that were developed in *Detroit, T. & I.R. Co. Control*, 275 I.C.C. 455, 492-93 (1950).

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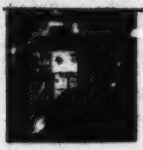

moved such conditions in seven cases.[13]

On July 16, 1986, the Commission reopened a proceeding to consider the application of the Union Pacific Corporation and its subsidiaries (UPC) to acquire the Missouri-Kansas-Texas Railroad Company and make it a subsidiary of the Missouri Pacific Railroad Company. A protective order to allow preparations for the filing of the application was also reinstated. The applicants had previously, on January 21, 1986, withdrawn a notice of intent to file an application for approval of the acquisition.[14] UPC's initial purchase offer was contigent on MKT's acquisition, through a tender offer, of at least 60 percent of MKT Certificates Representing a Charge on Income; the tender offer was unsuccessful, however.[15] A modified purchase agreement subsequently helped resolve this problem and was submitted to MKT's stockholders for approval.

On September 30, 1986, the U.S. Court of Appeals for the D.C. Circuit remanded the Commission's decision to approve the acquisition of North American Van Lines, Inc., by Norfolk Southern Corporation.[16] This rail-motor consolidation case concerns interpretation of a phrase in 49 U.S.C. 11344 regarding a rail carrier's use of motor carrier transportation to public advantage "in its operations." The Commission had approved the purchase based on rules adopted in 1984 governing the acquisition of motor carriers by railroads.[17]

Acquisition, Operation, and Construction

In fiscal year 1986, the Commission adopted final rules exempting from regulation all acquisitions and operations under 49 U.S.C. 10901, except where a Class I railroad abandons a line and another Class I railroad then acquires that line in a transaction resulting in a major market extension.[18] The new procedures allow the non-railroad purchaser of a short line simply to notify the Commission about the transaction and it can then be consummated within seven days. The Commission did not impose employee protective conditions on these short-line acquisitions or require notice to state agencies. The Commission proposed to reopen and modify the final rules to prohibit petitions to stay a notice of exemption.[19]

Continuing its efforts to make easier purchases of non-connecting short-line railroads, the Commission modified its rules so that continuance in

[13]Finance Docket No. 21755 (Sub-No. 1), *Missouri Pacific Railroad Company—Control—Chicago & Eastern Illinois Railroad Company* (not printed), served January 29, 1986, including: Finance Docket No. 27773 (Sub-No. 1), *Missouri Pacific Railroad Company—Merger—The Texas and Pacific Railroad Company and Chicago & Eastern Illinois Railroad Company*; Finance Docket No. 28586 (Sub-No. 2), *Missouri Pacific Railroad Company—Merger—Missouri Pacific Railroad Company, et. al.*; and Finance Docket No. 15228 (Sub-No. 1), *Pere Marquette Railway Company Merger, Etc.* (not printed), served February 26, 1986, including: Finance Docket No. 21160 (Sub-No. 1), *Chesapeake & Ohio Railway Company—Control—Baltimore & Ohio Railroad Company*; Finance Docket No. 23178 (Sub-No. 1), *Chesapeake & Ohio Railway Company and Baltimore & Ohio Railroad Company—Control—Western Maryland Railway Company*; and Finance Docket No. 23566 (Sub-No. 1), *Chesapeake & Ohio Railway Company—Control—Chicago South Shore & South Bend Railroad.*

[14]Finance Docket No. 30800, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control—Missouri-Kansas-Texas Railroad Company* (not printed), served July 16, 1986 and August 11, 1986.

[15]Finance Docket No. 30800, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control—Missouri-Kansas-Texas Railroad Company* (not printed), served January 30, 1986.

[16]*International Brotherhood of Teamsters* v. *ICC*, 801 F.2d 1423 (D.C. Cir. 1986).

[17]*Acquisition of Motor Carriers by Railroads*, 1 I.C.C.2d 716 (1984).

[18]*Class Exemption for Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1986).

[19]*Id.*, served April 17, 1986.

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control would be included in the class exemption for nonconnecting carriers.[20]

The Commission approved an application by the Chicago, Central & Pacific Railroad Company (CC&P) to acquire from the Illinois Central Gulf Railroad Company a 679-mile line of railroad running from Chicago to Omaha and trackage rights over two lines in Illinois.[21] Because the controlling owner of CC&P also owned the majority of the stock in Cedar Valley Railroad Company (CVR), a carrier that intersects the line CC&P proposed to buy, the CVR stock was put into a voting trust to let the purchase proceed under entry regulations instead of consolidation procedures.

In another major policy decision, the Commission proposed to exempt the construction of rail connecting tracks that do not involve major market extensions.[22] The proposed exemption is limited to short connections between an existing line of a constructing railroad and the line of another railroad over whose line the constructing railroad will be operating, or with which it will be interchanging traffic. The Commission stated that the exemption would not include major construction projects such as the Chicago & North Western Transportation Company's (CNW) proposed construction of a 10.7-mile line in the Powder River Basin of Wyoming. In that case, the Commission approved the construction project.[23] However, at the urging of the Commission, the CNW and the Burlington Northern Railroad (BN), a protestant to the construction application and the owner of a parallel line into the Basin, subsequently reached a settlement. The Commission approved BN's sale of a half-interest in its line to CNW, thereby avoiding the need for the new construction.[24]

On May 1, 1986, the Commission denied appeals and authorized the Tongue River Railroad Company (TRRC) to construct an 89-mile rail line between Miles City and Ashland, Montana, subject to the condition that TRRC begin operations only after it receives clearance from the Department of Interior that there is no violation of the Mineral Lands Leasing Act.[25]

Rates

The Commission completed or initiated several rulemakings to resolve important rail rate matters involving market dominance, maximum reasonable rate levels on non-coal traffic and on recyclable traffic, contract rates, common carrier rate flexibility, tank car-hire charges and related rate matters. Railroads and shippers were also encouraged to resolve, and assisted in the resolution of, individual controversies through negotiation. Together with a determined and heightened effort on the Commission's part to resolve pending

[20]Ex Parte No. 282 (Sub-No. 11), *Rail Consolidation Procedures—Continuance in Control of a Connecting Carrier* (not printed), served July 7, 1986.

[21]Finance Docket No. 30863, *Chicago, Central & Pacific Railroad Company—Purchase (Portion), Trackage Rights and Securities Exemption* (not printed), served December 24, 1985.

[22]Ex Parte No. 392 (Sub-No. 2), *Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. 10901* (not printed), served July 23, 1986.

[23]Finance Docket No. 30700, *Chicago and North Western Transportation Company and Western Railroad Properties, Incorporated—Construction and Operation—In Campbell County, WY* (not printed), served January 15, 1986.

[24]Finance Docket No. 30833, *Chicago and North Western Transportation Company, Western Railroad Properties, Incorporated, and Burlington Northern Railroad Company—Exemption from 49 U.S.C. 11343* (not printed), served August 12, 1986.

[25]Finance Docket No. 30186, *Tongue River Railroad Company—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, MT* (not printed), served May 9, 1986. Approved at a Commission open conference, March 20, 1986.

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cases, these negotiations caused the amount of rail rate litigation pending before the Commission to decrease significantly during fiscal year 1986.

The Commission completed an important rulemaking last fiscal year that adopted evidentiary guidelines for product and geographic competition considerations for "market dominance" determinations[26], with market dominance defined as the absence of effective competition over the transportation to which the rate applies.[27]

Under its guidelines, the Commission must find that a railroad has market dominance over a particular rail movement before the ICC can assert jurisdiction to consider whether a challenged rail rate is unreasonably high. Although the Commission's established guidelines for making market dominance determinations placed the burden upon complainants to show the absence of effective intramodal, intermodal, product, or geographic competition, these guidelines were modified to shift to the railroads the burden of proving the existence of product or geographic competition.[28]

The Commission applied its market dominance guidelines in specific proceedings during fiscal year 1986 and found market dominance over the transportation of heavy electrical articles,[29] and of coal.[30] In another instance, the Commission reopened a proceeding for the submission of new evidence and argument on market dominance under the new guidelines.[31]

In one of its most important rulemaking proceedings, the Commission began a proceeding to establish guidelines to assess maximum rate reasonableness on captive non-coal rail traffic[32] based on currently applicable rate guidelines.[33] Additionally, the ICC's proposal provides that a captive shipper should not be required to pay more than is necessary for the rail carrier(s) involved to earn adequate revenues, nor more than is necessary for efficient service, and that a captive shipper should also not carry the costs of any facilities or services from which it derives no benefit. Under the guidelines, the responsibility for payment for shared facilities or services would be apportioned according to the respective elasticities of demands among participating shippers. Thus, railroads would be given incentives to ensure that competitive traffic contributes as much as possible toward these costs. Finally, the guidelines would stipulate that changes in rates should not be so precipitous as to cause severe economic dislocations. The Commission also solicited comment on how the special needs of small or infrequent shippers (including coal shippers whose movements are too infrequent or small) can be accommodated.

The Commission resolved several rate disputes during the past fiscal year. In a unanimous vote, the Commission found that the rates that Southern

[26] *Product and Geographic Competition*, 2 I.C.C.2d 1 (1985).

[27] 49 U.S.C. 10709.

[28] *Market Dominance Determinations*, 365 I.C.C. 118 (1981) *affirmed sub nom., Western Coal Traffic League* v. *I.C.C.*, 719 F.2d 772 (5th Cir. 1983), *cert. denied*, 104 S. Ct. 2160.

[29] No. 382385, *McGraw Edison Company* v. *The Alton and Southern Railway Company, et al.* (not printed), served April 25, 1986.

[30] No. 378535, *Consumers Power Co.* v. *Missouri Pacific Railroad Co., et al.* (not printed), served June 1, 1986 (subsequently dismissed at complainant's request), by decision (not printed) served August 21, 1986).

[31] No. 38084, *International Minerals & Chemicals Corporation* v. *Burlington Northern, Inc. et al.* (not printed), served May 28, 1986.

[32] Ex Parte No. 347 (Sub-No. 2) *Rate Guidelines—Non-Coal Proceedings* (not printed), served May 21, 1986.

[33] Ex Parte No. 347 (Sub-No. 1) *Coal Rate Guidelines, Nationwide*, 1 I.C.C. 2d 520 (1985).

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Pacific and the Burlington Northern Railroad had charged on coal shipments from the Powder River Basin in Wyoming to Eimendorf, Texas, where the City of San Antonio has an electric plant, were unreasonably high and awarded refunds plus interest.[34] In one coal rate proceeding, the Commission established a maximum reasonable rate level for coal moving to a public utility and awarded reparations of approximately $18 million for charges paid in excess of the maximum reasonable amount.[35] In other coal rate cases, the Commission reopened case records to consider evidence under its guidelines.[36] In numerous coal rate cases, complainants and defendants negotiated settlements and dismissed complaints at the parties' requests. In several other cases, parties were in the process of negotiating settlements and the Commission thus held the cases in abeyance pending the outcome of negotiations.

A number of individual rate complaint cases on recyclable commodities were filed as a result of a rulemaking proceeding issued in fiscal year 1985[37] that had ordered aggregate reductions on recyclable rates and also permitted individual rate complaints for charges on recyclables during the years 1981-1985. However, the D.C. Circuit Court found that the Commission had erred in allowing additional complaints on an individual rate basis after aggregate compliance was made.[38] The Commission accordingly held such cases in abeyance pending clarification of whether individual cases concerning automobile shredder residue traffic were included in the court's proscription.[39] Concluding that the court's decision does not preclude it from hearing the automobile shredder residue complaints, the Commission reinstituted the cases and will consider the complaints on their merits.[40] At that same time, the Commission issued an advance notice of proposed rulemaking requesting comments on whether the complaint process is the more appropriate way to monitor rate increases on recyclables and whether other cost-related bases or procedures are needed to measure continued aggregate compliance.[41]

Regarding railroad contract rates, the Commission amended its regulations to require the filing of only an original contract and three copies of each contract summary.[42] The Commission also renoticed all of its contract rules and solicited comments on an industry agreement.[43]

To encourage more efficient use of the national freight car fleet, the annual update of car-hire charges was suspended pending completion of the

[34]No. 36180, *San Antonio, Texas, Acting by and Through Its City Public Service Board* v. *Burlington Northern Railroad Company, et al.*, ____ I.C.C.2d ____ served April 11, 1988.

[35]No. 38783, *Omaha Public Power District* v. *Burlington Northern Railroad Company* (not printed), served January 15, 1986 (initial decision affirmed at open voting conference on August 7, 1986).

[36]No. 36401, *Kansas City Power & Light Co.* v. *The Kansas City Sou. Ry. Co.* (not printed), served October 3, 1985, and No. 39719, *Arkansas Power & Light Co., et al.* v. *Burlington Northern, Inc., et al.* (not printed), served January 16, 1986.

[37]Ex Parte No. 394 (Sub-No. 1), *Cost Ratio for Recyclables—1983 Determination* (not printed), served June 25, 1985.

[38]*Norfolk & Western Ry. Co.* v. *United States*, 763 F.2d 373 (D.C. Cir 1985).

[39]For a list of the cases held in abeyance, see No. 377605, *Aluminum Company of America* v. *Louisville & Nashville Railroad, et al.* (not printed), served October 28, 1985.

[40]For a list of the cases to be decided, see No. 39647, *Newell Recycling Enterprises, Inc.* v. *Norfolk Southern Corp., et al.*, (not printed), served July 10, 1986.

[41]Ex Parte No. 394 (Sub-No. 3) *Cost Ratio for Recyclables—Compliance Procedures* (not printed), served June 13, 1986.

[42]Ex Parte No. 387, *Railroad Transportation Contracts* (not printed), served January 23, 1986, codified at 49 C.F.R. 1039, 1213.

[43]Ex Parte No. 387, *Railroad Transportation Contracts* (not printed), served May 8, 1986.

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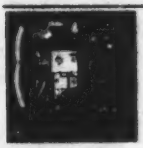

review of car-hire regulation.[44] Any increases, though, in car-hire rates would likely have had adverse effects on car use because a large car surplus continues to exist. The Commission also continued its exploration of market-oriented car compensation approaches.[45]

In another car-related matter, the Commission adopted an industry-generated agreement for a new national tank car mileage allowance system.[46] In an open voting conference, the Commission approved the agreement that revises the formula for computing mileage allowances to avoid over-compensating tank car owners and to reflect more accurately tank car supply and demand. The revised rules also provide that a railroad may file departure tariffs, and set different allowances from the prescribed system. However, any departures must be justified if protested unless the departure tariff matches another competing railroad's departure tariff that is not protested.

Finally, regarding boxcar service, the Commission adopted an agreement submitted by certain interested parties.[47]

In other individual rate matters, the Commission found that rates on radioactive materials moving by rail in the West and the South were sufficiently high to constitute unreasonable practices because the railroad defendants had attempted to avoid providing transportation in regular train service and had thereby circumvented their common carrier obligation by charging unduly high rates. The Commission found that railroad expenses were excessive and unwarranted and that the transportation of radioactive materials was necessary and consistent with the national policy for the disposal of spent nuclear fuel and radioactive waste.[48] In addition to those rate reasonableness cases in which decisions were issued, the Commission reactivated numerous cases that had been held in abeyance.[49]

Under its authority to review state regulatory decisions on intrastate rates,[50] the Commission announced decisional standards to be applied in cases involving the maximum reasonableness of intrastate coal rates and adjudicated the one new petition that was filed under those standards.[51] The Commission also certified four additional state regulatory agencies to regulate

[44]Ex Parte No. 334 (Sub-No. 7), *Suspension of Car Hire Updates*, (not printed), served January 2, 1986.

[45]Ex Parte No. 334 (Sub-No. 6), *Review of Car Hire Regulation*.

[46]Ex Parte No. 328, *Investigation of Tank Car Allowance System* _____ I.C.C.2d _____, served September 26, 1986.

[47]Ex Parte No. 346 (Sub-No. 19), *Boxcar Car Hire and Car Service*, _____ I.C.C. 2d _____, served September 12, 1986.

[48]*Commonwealth Edison Co., et al. v. Aberdeen & Rockfish Railroad Co., et al.*, _____ I.C.C.2d _____ (1986), embracing: No. 37998S, *General Electric Company v. Aberdeen & Rockfish Railroad Co., et al.*; No. 38004S, *Carolina Power & Light Co., et al.*; No. 38302S, *United States Department of Energy and the United States Department of Defense v. The Baltimore & Ohio Railroad*; and No. 38376S, *United States Department of Energy and the United States Department of Defense v. Aberdeen & Rockfish Railroad Co. et al. (served June 26, 1986)*.

[49]For example, No. 37478, *Amstar Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al.* (not printed), served April 10, 1986; No. 37437, *Arizona Electric Power Cooperative, Inc. v. The Atchison, Topeka and Santa Fe Railway Company, et al.* (not printed), served April 10, 1986; No. 37626, *Consolidated Papers, Inc., et al. v. Chicago and North Western Transportation Co., et al.* (not printed), served August 12, 1986; and No. 37609, *McCarty Farms, Inc., et al. v. Burlington Northern Inc.*, No. 37609 (Sub-No. 1), *McCarty Farms, Inc. v. Burlington Northern Railroad Company*, and No. 37615S, *Montana Dept. of Agriculture, et al. v. Burlington Northern Inc.* (not printed), served September 18, 1986.

[50]49 U.S.C. 11501.

[51]No. 38793, *Petition for Review of a Decision of the Public Service Commission of West Virginia Pursuant to 49 U.S.C. 11501* (not printed), served April 18, 1986; No. 39060, *Petition of the Denver and Rio Grande Western Railroad Company and Salt Lake, Garfield and Western Railway Company for Review of a Decision of the Public Service Commission of Utah Pursuant to 49 U.S.C. 11501 (not printed)*, served November 14, 1986.

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intrastate rates.[52] Four other states withdrew from intrastate regulation and, at their request, the Commission assumed direct intrastate regulation.[53] A decision involving the application of the Commission's 1981 exemption of containerized intermodal and trailer-on-flatcar (COFC/TOFC) service provided by rail carriers to intrastate traffic is currently pending before the Supreme Court.[54]

During fiscal year 1986, the Commission continued its disposition of individual rate challenges to the common carrier tariff rate base that were instituted under the Staggers Act. The rates were subject to one-time complaints, and there were 864 complaints challenging the reasonableness of the base rates in effect on October 1, 1980. As of February 28, 1986, 843 Section 229 rate complaints had been dismissed. Of the remaining 21 cases, at least 9 were expected to be settled within the fiscal year, leaving 12 cases of which 9 are being held at the complainants' requests, 3 were consolidated, and 2 advanced in litigation under special procedures.[55]

Base rates are updated by the Commission each quarter to account for changes in railroad costs.[56] The Commission undertook a re-examination of these rules, held an open voting conference on August 7, 1986, to consider proposed rule changes, and decided to link carrier rate increases taken under this procedure directly to the quarterly Rail Cost Adjustment Factor (RCAF).[57] In the future, concomitant educations will be required when the RCAF decreases. Additionally, the Commission voted to establish a system of credits to offset the effect of the substantial decline in fuel prices that occurred during 1986 and to correct the RCAF for errors in forecasting.

At the request of the Western Railroad Traffic Association, the Commission instituted a rulemaking proceeding to consider reducing the statutory notice period for independently filed rail carrier rates.[58] The proposal would reduce the notice period from 10 days to one for reduced rates, and would not apply to rate bureau collective fillings.

However, the Commission declined the Association's request to reduce the notice period from 20 days to 5 days for rate increases, because a shorter period would create problems for parties, including captive shippers, wishing to evaluate and prepare protests to a rate increase. The proposal would not apply to rate bureau collective fillings.

Finally, the Commission provisionally approved and retained anti-

[52]Ex Parte No. 388 (Sub-No. 3), *Intrastate Rail Rate Authority—Colorado* (not printed), served January 13, 1986; Ex Parte No. 388 (Sub-No. 11), *Intrastate Rail Rate Authority—Kentucky* (not printed), served October 23, 1985; Ex Parte No. 388 (Sub-No. 15), *Intrastate Rail Rate Authority—Minnesota* (not printed), served January 21, 1986; Ex Parte No. 388 (Sub-No. 34), *Intrastate Rail Rate Authority—Washington* (not printed), served April 29, 1986.

[53]Ex Parte No. 388 (Sub-No. 4), *Intrastate Rail Rate Authority—Florida* (not printed), served October 1, 1935; Ex Parte No. 388 (Sub-No. 12), *Intrastate Rail Rate Authority—Louisiana* (not printed), served April 1, 1986; Ex Parte No. 388 (Sub-No. 19), *Intrastate Rail Rate Authority—Nebraska* (not printed), served December 6, 1985; Ex Parte No. 388 (Sub-No. 32), *Intrastate Rail Rate Authority—Utah* (not printed), served February 5, 1986.

[54]*ICC v. State of Texas*, 770 F.2d 452 (1985), *cert. granted*, 54 U.S.L.W. 3787 (June 2, 1986).

[55]Ex Parte No. 421, Complaints Filed Pursuant to the Savings Provisions of the Staggers Rail Act of 1980 (Section 229, Public Law 96-448) (not printed), served March 5, 1986.

[56]Updating was done through a series of decisions issued in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served December 27, 1985; April 18, 1986; June 20, 1986; and September 19, 1986.

[57]Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served May 1, 1986.

[58]Ex Parte No. 346 (Sub-No. 22), *Short Notice Effectiveness for Independently filed Rail Carrier Rates* (not printed), served August 7, 1986.

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trust immunity for members of the Association of American Railroads rate bureau regarding their proposed agreement with respect to car-hire and mileage allowances and demurrage and storage charges.[39] The grant of immunity was extended pending approval of a revised agreement and action in related rulemakings.[40]

Joint Rate Surcharges, Cancellations, and Competitive Access[41]

The Staggers Act authorized individual railroads unilaterally to impose a surcharge, or cancel a joint rate, when the joint rate does not provide the railroad with 110 percent of its variable costs. This general surcharge provision was scheduled to expire by the end of fiscal year 1983, but the Commission extended the provision for one year in response to a petition. While authority to impose positive surcharges expired September 30, 1984, the Commission indefinitely granted an exemption for negative surcharges in August 1984. Individual railroads also are authorized unilaterally to impose a surcharge on traffic originating or terminating on light-density lines when existing rates do not provide revenues adequate to cover 110 percent of their variable costs plus 100 percent of the reasonably expected costs of continuing to operate the line. The statute imposes no expiration date on light-density surcharges.

Joint-rate and through-route cancellation issues continued to be a priority concern. New rules governing the cancellation of joint rates and through routes and the prescription of joint rates, through routes, and reciprocal switching became effective on October 31, 1985.[42] These rules require railroads to give 45 days' notice of all cancellations, and, upon request, to give an affected party an explanation and justification of a proposed cancellation of a through route and/or joint rate. The adopted rules also require the suspension and investigation of any proposed joint rate or through-route cancellation if the cancellation would eliminate effective railroad competition for the affected traffic.

The rules also provide that the Commission will prescribe a through route or a joint rate under Section 10705 of the Interstate Commerce Act (Act), or reciprocal switching under Section 11103, if the prescription is necessary to remedy or to prevent any action contrary to the Act's competition policies or is otherwise anticompetitive. Although the Commission retains jurisdiction to prescribe proportional rates, it declined to adopt rules for proportional rate prescriptions.[43]

During the fiscal year, several surcharge and cancellation cases were successfully resolved through

[39]*Railroads Per Diem, Mileage, Demurrage Agreement*, 1 I.C.C.2d 934 (1985).

[40]Ex Parte No. 462, *Exemption of Demurrage from Regulation*, advance notice of proposed rulemaking served December 16, 1985; Ex Parte No. 328, *Investigation of Tank Car Allowance System*, ___ I.C.C.2d ___, served September 26, 1986; and Ex Parte No. 334 (Sub-No. 6), *Review of Car Hire Regulation*.

[41]This section fulfills the requirements of Section 217(c)(1) of the Staggers Rail Act of 1980 (P.L. 96-448) for the Commission to report in its Annual Report to Congress on the following concerning joint-rate surcharges and cancellations: (a) the effect on shippers, ports, Class II and Class III rail carriers, railroad employees, etc.; (b) the number of surcharges, revenue collected from them, surcharge cancellations, and the number of joint rate cancellations by the Consolidated Rail Corporation and all other rail carriers; and (c) operation of special remedies available to Class II and Class III rail carriers under Section 217.

[42]*Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985).

[43]Id. and Ex Parte No. 445 (Sub-No. 2), *Intramodal Rail Competition—Proportional Rates* (not printed), served June 19, 1986.

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negotiations.[64] The Commission facilitates these negotiations by allowing complaining parties time to negotiate settlements without forfeiting their standing in pending complaint proceedings. However, in certain instances, protracted settlement negotiations have been subjected to routine progress reports.[65] In another case, a settlement was reached after the Commission initially suspended a proposed cancellation.[66] Two other proposed cancellations were suspended under the Commission's competitive access rules.[67]

In another significant competitive access case, the Court of Appeals for the D.C. Circuit affirmed the Commission's decision not to require the Consolidated Rail Corporation (Conrail) to re-establish certain joint rates with Pittsburgh and Lake Erie Railroad (P&LE) Company.[68] The court agreed with the Commission's analysis that P&LE had not shown that the routes were closed and that prescription would be premature absent a showing that the through routes could not otherwise be made competitive.

During fiscal year 1986, the Commission took significant action in several competitive access proceedings. In light of its recent rulemaking,[69] the Commission reopened a major competitive access case to reconsider Midtec Paper Corporation's request to impose reciprocal switching requirements so that Soo Line Railroad Company could serve its Wisconsin paper mill over Chicago & North Western Transportation Company lines.[70] The Commission reopened a proceeding in which a request for reciprocal switching was denied to allow parties to file new evidence and argument in light of the new competitive access standards.[71] The proceeding subsequently was held in abeyance to give the parties an opportunity to resolve the dispute. In instances where railroads could not agree on conditions and compensation for operations approved and authorized, the Commission established such terms.[72]

In other joint-rate matters, Conrail and Missouri Pacific were authorized to depart from the Commission's 1953 prescription of divisions of joint rates between Official and Southwestern Territories and that proceeding was reopened to consider whether to vacate or amend procedures for other prescribed divisions.[73] Conrail's joint-rate cancellation with the Ann Arbor Rail System, using its cross-lake ferry serv-

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[64]For example, No. 39176, *The Chlorine Institute, Inc. v. The Atchison, Topeka & Santa Fe Ry. Co., et al.*; No. 40021, *Cargill, Incorporated v. The Baltimore and Ohio Railroad Company*; and No. 40046, *Kansas City Power & Light Company et al. v. The Burlington Northern Railroad Company*.

[65]See, e.g., No. 39176 (Sub-No. 2), *Soo Line Railroad Company v. Chicago and North Western Transportation Company*, served August 12, 1986.

[66]I&S No. 9264, *MP Switching Cancellation With SP at Brownsville, TX* (not printed), served March 5, 1986, and March 21, 1986.

[67]I&S No. 9266, *Cancellation of Joint Routes at Bureau, IL, WR* (not printed), served July 2, 1986; and I&S No. 9267, *Cancellation of Single-Factor Through Joint Rates on Coal, CRW* (not printed), served July 17, 1986.

[68]*Pittsburgh and Lake Erie Railroad Company v. ICC*, _____ F.2d _____ (D.C. Cir. 1986).

[69]*Intermodal Rail Competition*, supra, note 61.

[70]No. 39021, *Midtec Paper Corporation, et al. v. Chicago & North Western Transportation Company (Use of Terminal Facilities and Reciprocal Switching Agreement)* (not printed), served November 14, 1986.

[71]Finance Docket No. 29883, *Universal Forest Products, Inc. v. Seaboard Coast Line Railroad Company (Reciprocal Switching Agreement)* (not printed), served April 11, 1986.

[72]Finance Docket No. 30137, *Southern Pacific Transportation Company v. Missouri Pacific Railroad Company* (not printed), served September 5, 1986, and Finance Docket No. 30759, *Denver and Rio Grande Western Railroad Company and Missouri-Kansas-Texas Railroad Company v. St. Louis Southwestern Railway Company* (not printed), served March 31, 1986.

[73]No. 29886 (Sub-No. 1), *In the Matter of Divisions of Joint Rates Between Official and Southwestern Territories*, served October 31, 1986.

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ice between Michigan and Wisconsin, was discontinued as moot because the ferry service had ceased.[74]

Reflecting the end of the commodity-oriented surcharge provisions of the Staggers Act, the Commission found that surcharges to a joint rate issued by a railroad without the concurrence of its joint-line partners and not otherwise authorized by a specific provision of the Interstate Commerce Act, are unlawful. The Commission ordered the offending tariffs stricken.[75] A light-density-line surcharge was canceled and refunds ordered when the railroad in question failed to defend its proposed surcharge.[76] Light-density-line surcharge provisions remain active for railroads earning inadequate revenues, however, and a short-line carrier's surcharge provisions over its entire 24-mile operation were found to be justified.[77]

Upon remand from the U.S. Court of Appeals for the Seventh Circuit, the Commission reconsidered Conrail's proposed cancellation or restriction of the application of joint rates on through routes via approximately 100 interterritorial gateways. The Commission found that Conrail's evidence failed to support a finding that its cancellations were in the public interest under 49 U.S.C. 10705(e). Conrail was ordered to enter into negotiations with protestants to reach a settlement consistent with the Commission's new competitive access rules.[78]

Concerning joint-rate surcharge and cancellation statistics, the relative lull in activity on surcharges and cancellations reported for fiscal year 1985 continued into fiscal year 1986. Most regular commodity surcharges remained in place, though Conrail removed some. Railroads under the Commission's jurisdiction added no new negative surcharges, and they added, removed, or revised very few light-density-line surcharges. The revenue impact of the changes over the year appears to be negligible.

The inactivity of the past two years in the area of surcharges and cancellations contrasts sharply with the experience of the first three years following enactment of the Staggers Act. For fiscal year 1981, the Commission reported 114 surcharges; by fiscal year 1983 that figure had dropped to 64. At the same time, joint-rate cancellation actions (in terms of Suspension Board actions) grew from 14 the first year to 33 by the third year.

The loosening of activity is due to several factors. As mentioned, railroads are no longer authorized to impose positive, regular commodity surcharges on a unilateral basis. Extensive contracting has replaced negative surcharges as a strategic tool for railroads to divert traffic to favorable routes. The exemption of boxcar traffic at the beginning of 1984 resulted in most joint boxcar rates being put on a combination-rate basis; up to that time, boxcar traffic had been a leading target of surcharges and cancellations.

While joint-rate cancellation activity was much higher in the fiscal

[74]No. 37083, *Joint Rates via the Ann Arbor Railroad System, December 1978* (not printed), served August 13, 1986.

[75]No. 40119, *Delaware and Hudson Railway Company—Unilateral Joint Rate Cancellation* (not printed), served August 19, 1986, amended in part August 26, 1986.

[76]No. 40114, *Light Density Line Surcharge, Boston and Maine Corporation* (not printed), served September 23, 1986.

[77]No. 40088, *Light Density Line Surcharge, The Mississippian Railway, Inc.* (not printed), served August 26, 1986.

[78]No. 38676, *Changes in Routing Provisions—Conrail—July 1981* (not printed), served September 23, 1986.

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1981-83 period, the overall impact of cancellations was insignificant since they affected only a small portion of the total rail rate structure. However, the impact on individual shippers experiencing the cancellations was in some cases significant in terms of cost and service. Finally, the impact of cancellations on routings in some cases led to reduced service and efficiency.

These findings come from a Commission staff study concluded during fiscal year 1986 on joint-rate and reciprocal switching cancellations. The results were based on shipper responses to a mail survey. The study found that overall only a small percentage of shippers or tonnage was actually affected by joint-rate or reciprocal switching cancellations; 3.9 percent of outbound traffic shippers and 2 percent of inbound traffic shippers experienced joint-rate cancellations during the 1981-83 calendar-year period, and only 1 to 1.7 percent of the calendar-year 1980 tonnage was affected by cancellations. Although there were intramodal and intermodal traffic shifts as a results of cancellations, for the most part traffic continued to move from the same origin to the same destination. This was the case for 50 to 72 percent of the joint rate traffic, and for 69 to 78 percent of the traffic handled by reciprocal switching.

Survey findings reveal that a majority of shippers affected by cancellations experienced cost increases. Between 89 and 94 percent of the shippers incurred increased costs, and 71 percent of these shippers reported resulting cost increases in the 1-15 percent range. With respect to service impacts, there was no change in car supply or reliability for the bulk of the tonnage (45 to 59 percent for joint rates and 83 percent for reciprocal switching). However, 15 to 26 percent of the tonnage experienced somewhat worse service. As for efficiency, while the joint-rate cancellations generally reduced the number of interchanges, 22.4 percent of the affected traffic had a more circuitous routing.

In sum, the results of this study suggest that the cancellations reviewed were not as prevalent as originally thought. Further, when cancellations did occur, only a relatively small percentage of traffic was actually affected.

To gather information for fiscal year 1986, the Commission contacted Conrail, eight other Class I railroad systems, one Class II line, and nine Class III railroad systems. These were railroads that had imposed surcharges before and could report whether those surcharges were still in place. The American Short Line Railroad Association, the Western Railroad Association, and the Southern Freight Association were also contacted, and these sources were supplemented by the ICC's own Suspension Board actions. Information was requested on regular commodity surcharges removed, negative surcharges added and removed, light-density-line surcharges added and removed, unilateral joint-rate cancellations, and the impacts of other railroads' joint-rate cancellations on Class II and III lines. Conrail reported having removed or reduced some regular surcharges and the Illinois Central Gulf Railroad reported the dropping of one, as well.

While railroads are free to impose unilateral negative surcharges or allowances, they are finding other means of applying competitive pressure. None of the roads contacted added any new

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negative surcharges. One reported removing one surcharge, dropping to 6 from the original 18 filed in 1983. Conrail indicated that contracting had taken the place of negative surcharge tariffs, and one small line connecting to Conrail expressed concern over traffic diversion because of Conrail's allowance contracts.

Light-density-line surcharge activity has been only somewhat greater. Conrail added no new surcharges. Southern Pacific added 3; the Soo Line Railroad, 3 (and an amendment to a previous surcharge); and the Greenville & Northern and the Mississippian Railroad, both Class III lines, each added 1. Western Railroads Association published fewer than 5 for its member roads. The Commission's Suspension Board set for investigation the two surcharge cases filed during the fiscal year. While dollar amounts for the light-density-line surcharges range as high as $2,000 a car, railroads expect the surcharges to move virtually no traffic and thus generate hardly any revenues. Reductions or removals of light-density-line surcharges were similarly sparse: Conrail indicated some activity; Guilford Lines (Boston & Maine, Delaware & Hudson, Maine Central), 1; Southern Pacific, 6 (including 2 of the Southern Pacific's new surcharges); Illinois Central Gulf, several (with the sale of some lines); and the Eureka Southern and Mississippian one each (the latter being a reduction of the Mississippian's new surcharge).

Unilateral joint-rate cancellations seemed to have virtually stopped. One Class I railroad was eliminating obsolete joint rates. The Suspension Board set two aside for suspension and investigation. The Class II line contacted by the Commission had been affected by Conrail's removal of participation in the 130,000-lb. scale rates on lumber from the South but was able to resolve the matter with Conrail by publishing proportional rates. The Class III lines contacted reported no new joint-rate cancellations by connecting Class I lines. One Class III line indicated it was able to negotiate favorably with its connection, but another was concerned that connecting major railroads were not entering into discussions with the short line on participation in reduced rates published by the major roads.

In conclusion, while many of the surcharges generated under Section 10705a of the Staggers Act remain in place, other forms of pricing—especially contracting—have taken the place of the surcharges. Both forms of pricing provide a safeguard to individual railroads against noncompensatory divisions. The original surcharges and cancellations were intended to provide immediate relief; but the new pricing forms should implant this protection in the basic rate structure.

Abandonments

During the past fiscal year, railroad line abandonments were filed with the Commission under provisions of the Interstate Commerce Act and under provisions of the Northeast Rail Service Act of 1981 (NERSA) governing Conrail abandonments.

Conrail continued the abandonment program that began with the August 1981 enactment of NERSA. In the past fiscal year, Conrail filed 89 applications to abandon 294.9 miles of line. A total of 65 Conrail applications involving 177.55 miles were granted, and 16 applications involving 35.09 miles were pending at the end of the

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year. Sixteen offers of financial assistance to purchase Conrail lines totalling 140.79 miles were made. At the end of the fiscal year, eight offers involving 61.82 miles were pending. In six proceedings involving 13.09 miles, the offers either were found not *bona fide*, or the parties did not reach an agreement for the sale of the lines involved. Three applications involving 66.76 miles were dismissed after Conrail and interested parties either reached an agreement for the sale of the lines, or accepted Commission-imposed terms of sale. There were 68 notices of insufficient revenues involving 362.21 miles of line on file with the Commission at the fiscal year's end. Conrail may still file NERSA applications to abandon these lines.

During fiscal year 1986, other railroads also sought abandonment authorizations. A total of 52 applications involving 1,595.96 miles were filed. At the end of the fiscal year, 11 applications to abandon 225.78 miles were pending. The Commission issued decisions on the merits of 56 applications involving 1387.66 miles. Of these, 52 applications involving 1239.80 miles were granted and four involving 147.86 miles were denied. Two applications involving 74.16 miles were dismissed.

Ten abandonment applications involving 224.61 miles were automatically granted because they were unopposed. In cases where there was opposition, the Commission decided not to investigate six cases involving 255.49 miles, to set 33 cases involving 639.51 miles for modified procedure, and to set three cases involving 120.19 miles for oral hearing.

The Commission denied abandonment requests in cases where insufficient cost evidence was presented to show that a line was being operated at a loss and where there was shown to be a clear adverse impact on shippers and communities and a minimum burden on the railroad to operate the lines.[79] The Commission also denied two abandonment requests where the evidence demonstrated that rail transportation was a critical element in the ability of public utilities to provide a vital public service, and no viable alternatives to rail service were shown to exist.[80]

In the context of non-Conrail proceedings, sixteen offers of financial assistance to purchase rail lines totalling 363.32 miles were made. Six lines were sold through the abandonment application process during the year, resulting in the transfer of 134.27 miles of track.

Numerous railroads filed exemption requests for lines that had been out of service two years or more under the special procedures provided by Commission regulations,[81] and 49 such notices involving 399.04 miles of track were filed with the Commission. However, on April 4, 1986, the Court of Appeals for the D.C. Circuit reversed and remanded the Commission's decision adopting these exemption procedures.[82] Proceedings involving abandonment or discontinuance of

[79]Docket No. AB-12 (Sub-No. 104), *Southern Pacific Transportation Company—Abandonment—In Gila, Graham, and Cochise Counties, AZ* (not printed), served September 16, 1986; and Docket No. AB-12 (Sub-No. 108), *Southern Pacific Transportation Company—Abandonment—In Houston, Harris County, TX* (not printed), served September 12, 1986.

[80]Docket No. AB-19 (Sub-No. 110B), *Buffalo, Rochester and Pittsburgh Railway Company and The Baltimore and Ohio Railroad Company—Abandonment and Discontinuance of Service in Indiana County, PA* (not printed), served June 26, 1986; and Docket No. AB-55 (Sub-No. 136), *Seaboard System Railroad, Inc.—Abandonment—In Shelby County, TN* (not printed), served October 21, 1986.

[81]49 CFR 1152, Subpart F.

[82]*Illinois Commerce Commission v. ICC*, 787 F.2d 618 (D.C. Cir. 1986).

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trackage rights over railroad lines out of service for more than two years were then handled as individual exemptions under 49 U.S.C. 10505, rather than through the notice of exemption procedures of 49 CFR 1152.

Sixty other petitions for exemption were filed with the Commission involving 330.67 miles of track proposed for abandonment. Fifty-six petitions were granted involving 324.25 track-miles, four petitions involving 6.42 miles were dismissed, and 39 petitions covering 555.65 miles of track were pending at the end of the year.

The Commission has received comments on a proposal to modify its standards for determining costs, revenues, and return on value in abandonment proceedings. The general purpose of the proposed changes is to permit a more accurate determination of the cost of rail operations in connection with rail abandonment and subsidy proceedings. The Commission proposed to distinguish economic costs of operation from actual avoidable costs; to modify the computation of the rate of return used to determine economic costs; and to incorporate certain regional subsidy standards.[83]

The Commission also adopted regulations to implement section 208 of the National Trails System Act Amendments of 1983.[84] The rules give interested persons the opportunity to negotiate agreements to use, for recreational trails, the rights-of-way of railroad lines approved for abandonment. Trail-use authorization by railroads is voluntary and is subject to future restoration and reconstruction of the right-of-way for railroad purposes.[85]

The Commission modified its regulations governing offers of financial assistance. Under the new rules, the offeror who requests the Commission to set the terms and conditions of sale or subsidy must submit evidence in support of the proposed terms at the time the request is due (within 30 days after the offer of financial assistance is made). The railroad's reply to this evidence and support for the terms it seeks are due within 50 days after the offer is made. An offeror may submit rebuttal evidence within 60 days of the offer. The Commission will issue a decision within 60 days after the request is due (*i.e.*, within 90 days after the offer is made).[86]

The Commission amended its rules to require a party in an investigated abandonment proceeding to exhaust its administrative remedies by filing an administrative appeal with the Commission before appealing the Commission's decision to a United States Court of Appeals.[87]

The Commission also clarified its procedures to delineate the authority delegated to the Director of the Office of Proceedings to issue certain decisions in abandonment matters and to establish procedures for entire Commission deposition of any appeals.[88]

[83] Ex Parte No. 274 (Sub-No. 11), *Abandonment Regulations—Costing* (not printed), served January 22, 1985.

[84] Pub. L. 98-11, codified at 16 U.S.C. 1247(d).

[85] Ex Parte No. 274 (Sub-No. 13), *Rail Abandonment—Use of Rights-of-Way as Trails*, _____ I.C.C.2d _____, served May 6, 1986, petition for reconsideration denied by decision (not printed), served August 19, 1986.

[86] *Rail Abandonments—Offers of Financial Assistance*, 1 I.C.C.2d 950 (1986).

[87] Ex Parte No. 274 (Sub-No. 15), *Revision of Abandonment Regulations*, _____ I.C.C.2d _____, served June 12, 1986.

[88] Ex Parte No. 274 (Sub-No. 17), *Abandonment—Delegation of Authority*, _____ I.C.C.2d _____, served October 2, 1986.

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Exemptions

Rail exemptions continued to facilitate changes in the rail industry and to reduce unnecessary regulation. The Commission has issued class exemptions in the areas of rate regulations,[89] acquisitions,[90] leases,[91] and trackage rights,[92] as well as minor transactions within a corporate family and joint relocation projects.[93]

During the fiscal year, the Commission processed 80 notices of exemption and, before the class exemptions became effective, granted 30 individual exemption petitions involving acquisitions, leases and trackage rights agreements. Additionally, a class exemption was adopted for a substantial number of securities issued and liabilities assumed by railroads.[94] Individual exemptions are widely used to eliminate tariff-filing requirements and rate regulation, as well as for abandonments, and minor control and merger transactions.[95] These individual and class exemptions reflect instances where the impact of the proposal on transportation or the public was minimal, or regulation was not necessary to protect shippers from abuses of market power.

Following the court remand of the boxcar joint-rate exemption, the Commission reopened the record for further public comment. Based on the supplemented record, the Commission found that joint rates on boxcar traffic, other than those on traffic originating or terminating at facilities located on Class III railroads, warrant exemption from Commission regulation.[96] The Commission continues to exercise full regulatory control over boxcar joint rates between short lines and larger railroads.

In the area of boxcar car-hire charges, in a rulemaking that developed from the boxcar exemption proceeding, the Commission adopted a compromise proposal negotiated by Conrail, small railroads, and certain car lessors.[97] Under the proposal, carriers may apply mileage charges and car-hire reclaims to empty boxcars in the absence of bilateral agreements to the contrary. However, boxcars owned or leased to small railroads are excluded from these empty car provisions. Other rules were adopted to assist small railroads.

The Commission has proposed to exempt from regulation the leasing of surplus railroad equipment.[98] This would enable railroads to compete more effectively with private car companies in leasing idle cars for storage purposes. The Commission also has requested comments on what deregulatory initiatives, if any, should be undertaken with respect to demurrage charges assessed by railroads, and is currently analyzing the comments filed in that proceeding.[99] Another exemption adopted this year eliminates the re-

[89]49 CFR 1139.10 *et seq.*
[90]49 CFR 1150 and 1180.2(d)(1) and (2).
[91]49 CFR 1150 and 1180.2(d)(4).
[92]49 CFR 1180.2(d)(4) and (7).
[93]49 CFR 1180.2(d)(3) and (5).
[94]*Exemption of Railroads from Securities Regulation Under 49 U.S.C. 11301*, 1 I.C.C.2d 915 (1986).
[95]For more information on the Commission's activities in these areas, see respective subject headings.

[96]Ex Parte No. 346 (Sub-No. 8), *Exemption from Regulation—Boxcar Traffic*, _____ I.C.C.2d _____ (served September 12, 1986).
[97]Ex Parte No. 346 (Sub-No. 19), *Boxcar Car Hire and Car Service*, _____ I.C.C.2d _____ (served September 12, 1986).
[98]Ex Parte No. 346 (Sub-No. 20), *Exemption from Regulation—Storage Leases* (not printed), served March 6, 1986.
[99]Ex Parte No. 462, *Exemption of Demurrage from Regulation* (not printed), served November 8, 1985.

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quirement that rail carriers file international joint rates on regulated traffic.[100]

The Commission adopted an exemption permitting a railroad to charge a contract rate, rather than its published rate, where shipments are transported after agreement has been reached on the rate, but prior to the contract's effective date.[101] Responding to the adverse court decision, railroads petitioned for reopening in the export coal exemption proceeding but later withdrew their request. Their petitions were dismissed, thus ending this proceeding.[102]

Rail Labor Issues

In an effort to promote the continued operation of rail lines that existing operators seek to eliminate, the Commission continued to reaffirm its longstanding policy of not imposing labor protective conditions under 49 U.S.C. 10901.[103] The Commission must, by statute, impose certain rules—"labor protective conditions"—to protect rail employees from adverse consequences when it authorizes a railroad to abandon or sell a line to another railroad. When a carrier sells an active rail line to a noncarrier, however, and the noncarrier then seeks approval from the Commission under Section 10901 to operate the line, the Commission does not routinely impose labor protective conditions either on the seller or on the new operator. The Commission has held that doing so would seriously jeopardize the economics of continued operations and result in abandonment with an attendant loss of both service and jobs on the line.[104] Section 10901 does not require the Commission to impose labor-protective conditions,[105] and the agency has exercised this discretion both in proceedings under Section 10901 and in its decision on petitions under Section 10505 for exemption from the provisions of Section 10901. The Commission also has found that employee protection will not automatically be imposed on certain class exemptions from Section 10901.[106] *In all cases,* however, labor interests continue to have the opportunity to show that employee protection is necessary. Many "acquisition and operation" applications under section 10901 involve abandoned lines where protection for employees of an abandoning carrier already have been imposed.

In March, the U.S. Supreme Court granted petitions for a writ of certiorari in a case concerning a major Railway Labor Act (RLA) issue involving the Commission.[107] In 1982, the Commission approved a consolidation of the Union Pacific (UP), Missouri Pacific (MP), and Western Pacific (WP) railroad companies.[108] As a condition of its approval, the Commission required that those railroads grant trackage rights to their competitiors, the Missouri-Kansas-Texas Railroad Company (MKT) and the Denver & Rio Grande Western Railroad Company (DRGW),

[100]Ex Parte No. 346 (Sub-No. 21), *Railroad Exemption—International Joint Through Rates* (not printed), served July 7, 1986.

[101]Ex Parte No. 387 (Sub-No. 958), *Exemption from Regulation—Shipments Subsequently Made Subject to a Contract Rate,* 1 I.C.C.2d 966 (1985).

[102]Ex Parte No. 346 (Sub-No. 7), *Railroad Exemption—Export Coal* (not printed), served May 2, 1986.

[103]See, e.g., *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 1 I.C.C.2d 810 (1985). This case is pending appeal on labor issues in *Illinois Commerce Commission* v. *ICC,* Nos. 85-1107 and 85-1131 (D.C. Cir., filed Feb. 13 and 21, 1986).

[104]*Id.*

[105]*Id.* at pp. 813-814.

[106]*Id.* at p. 814.

[107]*ICC* v. *Brotherhood of Locomotive Engineers,* Nos. 85-792 and 85-793 (filed November 7, 1985).

[108]Finance Docket No. 30,000 *et al., Union Pacific—Control—Missouri Pacific; Western Pacific,* 366 I.C.C. 459 (1982).

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in order to ameliorate certain anti-competitive effects of the merger. On review at the Commission, the unions representing employees of the MP maintained that, under the RLA, they have a right to negotiate over the selection of crews performing the trackage rights operations over the MP's lines. However, the Commission found no evidence that the unions had any established right to participate in determining crews of other railroads operating over MP's tracks.[109] The Commission also held that, in any event, its approval of the trackage rights transaction was dispositive; that is, MKT's and DRGW's reservation of the right to crew their own trains was a clearly stated term of their trackage rights proposals and, under Section 11341(a), the Commission's approval automatically exempted the railroads participating in the trackage rights transactions from any conflicting requirements imposed by the RLA.[110]

On review of the Commission's decision, a divided United States Court of Appeals for the District of Columbia Circuit ruled that Section 11341(a) (which provides an exemption from the antitrust laws and all other law as necessary to carry out a transaction approved under subchapter III of the Act) does not automatically exempt carriers participating in approved transactions from inconsistent provisions of other laws, and that the Commission "must explain why termination of the [Union's] asserted right to participate in crew selection is necessary to effectuate" the Commission-approved trackage rights transaction.[111]

The issue on appeal before the Supreme Court is whether the Commission's approval of a transaction under 49 U.S.C. 11343 through 11351 is sufficient to exempt a party to the transaction from certain provisions of the RLA "as necessary to carry out the transaction," without a specific finding that the exemption is necessary. The case also raises the procedural issue of whether the unions' petition for review in the Court of Appeals was timely filed under the Hobbs Act.

In another case involving the RLA, the U.S. Circuit Court of Appeals for the Second Circuit held that a Federal District Court may not, under the RLA, enjoin a carrier's actions when doing so would impinge on the Commission's approval of a transaction under 49 U.S.C. 10905 (offers of financial assistance to avoid abandonment and discontinuance).[112] The case involved an abandonment where issuance of a certificate was delayed to permit the parties to negotiate a financial assistance agreement for continued rail service under section 10905.[113] While the abandonment proceeding was pending, four member unions of the Railway Labor Executives' Association (RLEA) sought to invoke the so-called *status quo* provisions of the RLA[114] to force the abandoning/selling carrier to

[109]Finance Docket No. 30,000 (Sub-No. 18), *Denver & R. G. W. R. Co.—Trackage Rights—Missouri Pac. R. Co.—Between Pueblo, CO and Kansas City, MO* (not printed), served October 25, 1983.

[110]*Id.*

[111]*Brotherhood of Locomotive Engineers* v. *ICC*, 781 F.2d 714 (D.C. Cir. 1986).

[112]*Railway Labor Executives' Ass'n.* v. *United States*, 791 F.2d 944 (2nd Cir. 1986).

[113]Docket No. AB-231, *Staten Island R. Corp.—Abandonment and Discontinuance of Service—In Richmond County, NY and Union County, NJ* (not printed), served February 20, 1985.

[114]Under section 6 of the RLA, a party to a collective bargaining agreement which wishes to change the terms of the agreement must serve a written notice of those changes on the other party to the agreement. Service of the notice preserves the status quo.

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negotiate labor protection for its employees.

The Commission approved a proposal under which the offeror would, under section 10905, acquire and operate the lines; none of the labor protective conditions sought by the unions would be granted; and the parties would not be subject to the RLA notices.[115] The sale of the lines was consummated on the date the order was served, and the following day RLEA filed suit in a United States District Court to enjoin asserted violations of the RLA by the railroads.

The District Court granted the carriers' motion to dismiss, and the Court of Appeals affirmed, holding that RLEA had failed to state a claim upon which relief could be granted. The view of the Court of Appeals was that relief granted under the District Court's RLA jurisdiction could not modify or rescind the Commission's order under section 10905 concerning the sale of the rail lines, in this case, where no remedy could be formulated without impinging on the Commission's order approving the sale.

Short Line Railroads

Short-line railroads operate as low-cost feeder and distribution systems in connection with larger railroads, filling local transportation needs in many cases more effectively and more profitably than the trunk-line operators. During fiscal year 1986, the short-line railroad movement saw continued expansion as a result of increased industry experience in assessing the feasibility of short-line operations and the Commission's easing of regulatory barriers to entry and new operation.

The abandonment of lines that are unprofitable or marginally profitable in the hands of larger carriers continues to provide a steady supply of lines that may be operated profitably by new or existing small carriers, which usually have lower costs. To assist interested parties in examining the feasibility of short-line operations, the Commission publishes and distributes two booklets[116] that examine and define the regulatory, economic, physical, and legal aspects of starting a small railroad. The Commission also routinely responds to oral and written inquiries on matters of interest to short lines, including application and exemption procedures and information on lines to be abandoned.

During the past fiscal year, the Commission adopted several class exemptions that are particularly useful to short-line operations. In January, the Commission adopted expedited procedures, codified at 49 CFR 1150.31, exempting most short-line acquisitions and operations from regulation under 49 U.S.C. 10901.[117] A new owner and/or operator must file only a brief notice of exemption for publication in the *Federal Register,* and may consummate the transaction seven days after the notice is filed. Absent a special showing of need,[118] no employee protective conditions are imposed, in keeping with the fact that employee protection is discretionary under section 10901.

In July, the Commission proposed to adopt another class exemption from section 10901 for the construction of short connecting tracks. Such an ex-

[115]Docket No. AB-231, *supra,* served April 19, 1985.

[116]"Guidelines for Evaluating the Feasibility of Short Line Operations" and "So You Want to Start a Small Railroad."

[117]Ex Parte No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 1 I.C.C.2d 810 (1986).

[118]*Id.* at pp. 815-816.

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emption would facilitate short-line operations that are dependent on connection with another railroad.[119]

The Commission also expanded an existing class exemption for acquisitions under 49 U.S.C. 11343 to permit the continuance in control of nonconnecting non-Class I railroads.[120] Thus, short-line railroads may create subsidiaries that may, in turn, acquire additional carriers with the parent having only to file, at the time of the acquisition, a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g).

A class exemption from the requirements of 49 U.S.C. 11301 to issue securities and assume obligations was adopted for: (1) Class II and Class III rail carriers; (2) parties acquiring lines under the financial assistance procedures at 49 U.S.C 10905; and (3) any rail carrier issuing equipment trust certificates.[121] Excluded from the exempt class, however, are securities issuances that are directly related either to: (1) acquisition and operation applications under 49 U.S.C. 10901; or (2) combination applications filed under 49 U.S.C. 11343.

In abandonment proceedings where offers of financial assistance are filed under 49 U.S.C. 10505 to purchase a line, the Commission's rules were revised to shorten deadlines for the filing of evidence (*see* "Abandonment," above). The revised rules give the Commission more time to analyze financial assistance offers.

In the rates area, following the remand of the boxcar joint-rate exemption, the Commission again decided to exempt from regulation joint rates on boxcar traffic, except for joint rates on traffic originating or terminating at facilities located on Class III railroads.[122] In addition, small railroads, Conrail, and car lessors negotiated a compromise proposal, adopted by the Commission[123], to permit carriers to apply mileage charges and car-hire reclaims to empty boxcars, absent bilateral agreement to the contrary, except for boxcars owned by or leased to small railroads. Special rules for the benefit of smaller carriers freeze car-hire rates on their cars and prohibit adoption of freight rates that vary according to car ownership or car-hire cost for shipments to or from facilities located on Class III carriers.

Recognizing Congressional concern about joint-rate cancellations that affect smaller railroads, the Commission adopted special procedures requiring a 45-day notice period and, upon the demand of any connecting carrier, an explanation and justification of a proposed joint rate or route cancellation, prior to the filing of a proposal.[124] The rules also set forth the criteria for investigating cancellations and prescribing joint rates, through routes, and reciprocal switching.

Several other proceedings involved rulings that particularly affect short-line railroads. In an exemption proceeding currently on appeal before the U.S. Court of Appeals for the Eighth Circuit, the Commission continued to apply lease and operation jurisdiction

[119]Ex Parte No. 392 (Sub-No. 2), *Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. 10901* (not printed), served July 23, 1986.

[120]Ex Parte No. 282 (Sub-No. 11), *Rail Consolidation Procedures—Continuance in Control of a Nonconnecting Carrier* (not printed), served July 7, 1986.

[121]Ex Parte No. 387, *Exemption—Railroads—Regulation Under 49 U.S.C. 11301*, 1 I.C.C.2d 915 (1986).

[122]Ex Parte No. 346 (Sub-No. 8), *Exemption from Regulation—Boxcar Traffic*, ____ I.C.C.2d ____ ____ (served September 12, 1986).

[123]Ex Parte No. 346 (Sub-No. 19), *Boxcar Hire and Car Service*, ____ I.C.C.2d ____ *(served September 12, 1986).*

[124]Ex Parte No. 445 (Sub-No. 1), *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985).

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under 49 U.S.C. 10901 (rather than 49 U.S.C. 11343) when a line is abandoned and subsequently taken over by another operator.[125]

The Commission also has held that feeder-line operators (49 U.S.C. 10910) that elect to be exempt from Title 49, Subtitle IV (except Chapter 107), are not carriers "providing transportation subject to the Commission's jurisdiction," and a second acquisition of either an abandoned or operating line is a noncarrier acquisition. However, as a result of a second, non-feeder line acquisition, the operator becomes a carrier subject to the Commission's jurisdiction, even if the buyer and/or operator is granted an exemption from Subtitle IV.[126] Thus, any subsequent acquisition would be governed by Section 11343 (if it involves an active rail line), or by Section 10901 (if it involves abandoned rail property).

Labor protection was a major issue in a case involving a company newly organized to purchase and operate 150 miles of railroad.[127] Section 49 U.S.C. 10901 was applied to the transaction because it involved a noncarrier acquisition of a line of railroad. No employee protective conditions were imposed on this aspect of the transaction because such conditions are discretionary under Section 10901, and imposing them (on either the buyer or the seller) was found to diminish or negate the economic justification for transferring the marginally profitable line.

Finally, in cases involving offers of financial assistance, the Commission held that: (1) it is ultimately for the Commission itself to decide how much property has to be transferred under the forced-sale provisions of 49 U.S.C. 10905 (and rejected the argument that, as a matter of law, the entire width of right-of-way property obtained under a land grant from the U.S. government must be conveyed);[128] and (2) that, in calculating the net liquidation value of the line, the proper standard for land valuation is whether the railroad has marketable title, not fee-simple absolute title.[129]

On July 25, 1986, Chairman Heather J. Gradison delivered a statement on short line railroads to the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation. In addition to discussing some of the above-described proceedings affecting short lines, the Chairman presented a profile of short lines based on a questionnaire distributed to 106 Class III railroads. The 91 railroads responding to the study operated 3,633 miles of line in 36 states, employed 767 individuals (about 12 percent of which are union members), and handle 225,000 carloads of predominantly bulk traffic annually. Because short lines know what their revenue division will be before beginning operations, short lines dissatisfied with the division simply do not acquire the lines, while those that are satisfied report generally favorable relationships with their connecting carriers.

[125]Finance Docket No. 30721, *Dakota Rail Inc.—Petition for Exemption from 49 U.S.C. 10901, 10903, and 11301* (not printed), served April 10, 1986.

[126]Finance Docket No. 30725, *Indiana Hi-Rail Corp.—Exemption from 49 U.S.C. Subtitle IV* (not printed), served April 21, 1986.

[127]Finance Docket No. 30764, *Arkansas & Missouri R. Co.—Exemption from 49 U.S.C. 10901, 11301, 11322 and 11343* (not printed), served July 17, 1986.

[128]Docket No. AB-43 (Sub-No. 136), *Illinois Cent. Gulf R. Co.—Aband.—in Christian, Marion, and Shelby Counties, IL* (not printed), served August 15, 1986.

[129] *Id.*, served August 4, 1986.

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The vast majority of the short lines responding to the questionnaire believe that their future operating prospects are positive and attribute success to several factors, the most significant of which has been the development of new business, followed by labor efficiency and labor cost considerations. Effective marketing, tailored service, and stable traffic patterns also contribute to positive assessments. Carriers that are pessimistic about the future attribute their problems to a lack of traffic, a decline in traffic, or the anticipation of traffic that did not materialize. Virtually all of these carriers also indicate that labor productivity improvement over the Class I experience has been achieved as a result of both lower pay scales and, more importantly, flexible work rules with cross-craft flexibility for making work assignments.

Freight Car Service

Surpluses of railroad-controlled freight cars continued to decline in fiscal year 1986. The average surplus at the end of December 1985 was 107,306 cars. That figure dropped to a daily average of 74,631 cars by the end of September 1986, for a daily average during the fiscal period of 90,969 cars. The decline resulted principally from the reduced ownership of railroad equipment. For example, on October 1, 1985, Class I railroads reported a combined-fleet ownership of 879,290 cars, but by October 1, 1986, that ownership level had dropped to 816,518 cars. This was a net reduction in the combined-fleet of 62,772 cars, which is the difference between the number of cars installed (886) and the number of cars retired or otherwise lost from the control of the Class I carriers (63,658).

On September 30, 1986, the entire rail car fleet of Classes I, II, and III railroads, private car companies, and shippers consisted of 1,359,300 cars, an overall net reduction of 76,846 cars from the prior fiscal year. This figure reflects the overall reduction in rail-car equipment by all contributors to the rail-car fleet.

The average carrying capacity of a freight car placed into rail service during fiscal year 1986 was 88 net tons, a decrease of 7 net tons under per-car tonnage figures registered ten years ago. While the aggregate carrying capacity of cars installed was 77,968 net tons, there was an aggregate capacity loss of 4,696,382 net tons owing to the retirement of cars accounting for 4,774,350 net tons capacity.

Fiscal year 1986 freight-car loadings totaled 19,389,509, a slight increase over the fiscal year 1985 car loading total of 19,322,312. Relative to individual commodity loadings, coal ranked first in number, with 5,690,695 coal-loaded cars accounting for 29.3 percent of total cars loaded, but an increase of less than 1 percent over the 5,638,546 cars loaded in fiscal year 1985. The second heaviest commodity loadings were those for chemicals and allied products—1,244,326 cars—or a 1.2-percent decrease from the 1,259,219 cars loaded with chemicals in fiscal year 1985. Cars carrying grain ranked third in total loadings with 1,218,731 cars, an increase of 2.3 percent from the fiscal year 1985 loading figure of 1,191,777 cars.

The greatest percentage increase in fiscal year car loadings—4.9 percent—occurred in the loading of lumber and wood products, except furniture. Crushed stone, gravel and sand were next with a 3.8-percent increase in cars,

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loaded, followed by grain and metallic ores, each with a 2.3-percent increase in cars loaded. Last fiscal year saw a 0.6-percent decrease in cars loaded with food and kindred products, accounting for 560,919 cars versus 564,358 cars similarly loaded during the prior fiscal year. Grain mill product loadings increased, however, by 0.9 percent with 537,084 fiscal year 1986 car loadings compared to a fiscal year 1985 total of 532,415 cars.

In fiscal year 1986, there were 2,926,072 flatcars loaded with 4,855,728 trailers/containers, a 4.7-percent increase over fiscal year 1985's total of 2,791,364 similarly loaded flatcars transporting 4,499,407 trailers/containers.

The locomotive ownership of Class I railroads on October 1, 1985, consisted of a total of 22,818 units, while on October 1, 1986, such ownership was down to 21,620 units—a 1,198-unit reduction. At the end of fiscal year 1986, Class I railroads had 34 multipurpose locomotives and 2 switch locomotives on order.

During fiscal year 1986, the Commission issued one emergency rerouting order in the furtherance of railroad operations.

Passenger Service

While the Commission's responsibilities with respect to rail passenger service are limited, several passenger matters were considered in fiscal year 1986. One major responsibility of the Commission is to settle disputes between Amtrak and other railroads. The Commission instituted a proceeding to consider an Amtrak request that a Conrail line in Detroit, Michigan, be conveyed to it and that appropriate terms of sale be set by the Commission under 45 U.S.C. 562(d).[130] Previously, Conrail was authorized to abandon the line, but the abandonment was postponed because the line was also the subject of a competing offer of financial assistance to acquire for the continuation of rail service under 49 U.S.C. 10905. The Commission also opened a proceeding to determine the compensation due Amtrak for the operation of freight service by Conrail on Amtrak properties in the Northeast corridor.[131]

Designated agents of the Commission's Office of Compliance and Consumer Assistance issued 3 emergency orders to prevent rail passenger service interruptions. Permission was granted to authorize Amtrak passenger trains to use alternate routes while they were enroute to their destinations. Such orders become necessary, and are accordingly issued, whenever a railroad company operating an Amtrak train cannot move the train over its normal route because of circumstances beyond its control, and an alternate route exists for use over the lines of a connecting rail carrier.[132]

Two other proceedings involved complex legal issues concerning jurisdiction over passenger services in California. In one, the Commission determined that the applicaton of the Mendocino Coast Railway for a discontinuance of service had to be handled as an interstate matter notwithstanding the fact that the line was located wholly within one state. This conclusion followed from the fact that California did not obtain federal certification to regulate intrastate rail transportation

[130]Finance Docket No. 30888, *National Railroad Passenger Corporation—Conveyance of Conrail Line in Wayne County, MI* (not printed), served October 6, 1986.

[131]Finance Docket No. 30865, *National Railroad Passenger Corporation—Compensation—Conrail Freight Services* (not printed), served July 29, 1986.

[132]45 U.S.C. 562(c).

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matters.[133] The decision has been appealed by the California Public Utilities Commission. In the other proceeding, the Commission approved a settlement agreement between the Southern Pacific Transportation Company and the California Department of Transportation concerning the level of SP's compensation for now-discontinued passenger services.[134]

Finally, the Commission declined to investigate a proposed discontinuance of passenger service between Wisconsin and Michigan. The revenues were minimal, ridership was virtually nonexistent, and the costs, including liability insurance, greatly exceeded the carrier's revenues.[135]

[133]Finance Docket No. 30920, *Mendocino Coast Railway, Inc. Discontinuance of Train Service in Mendocino County, CA* (not printed), served August 27, 1986.

[134]No. 39095, *California Department of Transportation v. Southern Pacific Transportation Company* (not printed), served April 3, 1986.

[135]Finance Docket No. 30361, *Soo Line Railroad Company—Notice of Discontinuance of Passenger Service from Rhinelander and Neenah, WI to Sault Ste. Marie, MI* (not printed), served September 10, 1986.

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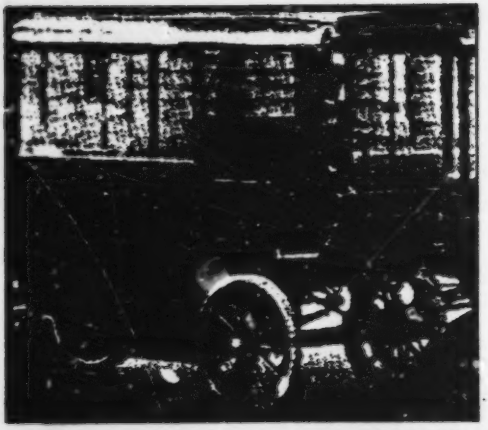

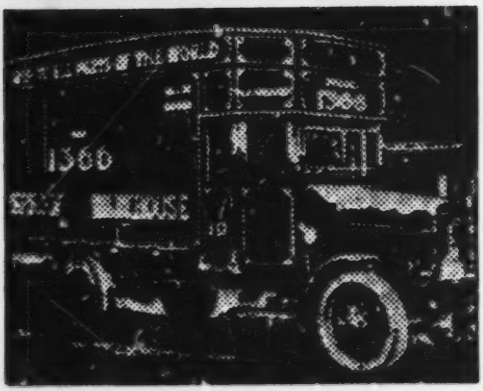

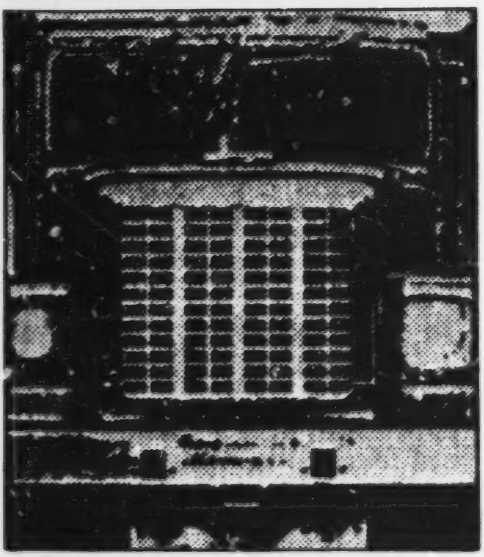

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TRUCKING COMPANIES

General Financial Condition

Earnings for 100 of the largest motor carriers of property improved substantially during the first and second quarters of 1986 compared to the same periods of 1985, despite sluggish growth in the Nation's economy. This was the first quarter-to-quarter improvement in earnings for this group of carriers since the first quarter of 1984. The favorable trend indicates that the industry may have adjusted to the changed economic environment resulting from reforms mandated by the Motor Carrier Act of 1980. A continued decline in fuel costs has also contributed to the industry's improved financial performance.

Commission data for 100 of the largest carriers for the twelve months ending June 30, 1986, and June 30, 1985, show that operating revenues increased 4.7 percent to almost $18 billion and revenue tons hauled rose by less than 1 percent. Net carrier operating income rose 26.7 percent to $859.3 million and net income increased 8.1 percent to $436.4 million, as a result of the large earnings improvement in the first half of 1986. The industry's operating ratio (the ratio of operating expenses to operating revenues) favorably declined from 96 percent to 95.2 percent. The rate of return on shareholders' equity rose from 11.98 percent to 12.53 percent.

The trucking industry's earnings should further increase with improvements in the economy such that conditions favoring the industry's realization of the full benefits of deregulation may be reached.

Mergers and Unifications

Motor property carriers continued to use the Commission's expedited exemption procedures to transfer operating authority and to effect changes in their financial structure.[1] Three separate sets of procedural regulations are available to parties seeking approval of transactions of this type.

The Commission exempted, on a class basis, transactions between motor carriers of property and between such carriers and noncarriers.[2] Under these procedures, employees may oppose a transaction proposed for exemption on the basis of adverse employment impacts and any interested party may oppose a transaction on the basis of possible anticompetitive effects. During fiscal year 1986, approximately 271 proceedings were processed under this class exemption regulation. One of these proceedings was opposed by employee interests.[3]

Although the Commission may not exempt finance transactions between small motor carriers of property, it adopted the class exemption regulations as the procedural rules for processing small carrier transfers of operating authority.[4] A small carrier transfer may be opposed on anticompetitive grounds. During the past fiscal year, 670 small motor property carrier trans-

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[1]The motor exemption authority is codified at 49 U.S.C. 11343(a). Under this statute, the Commission may exempt finance transactions (mergers, leases or purchases of operating authority, acquisitions of stock control and similar matters) involving motor carriers of property that are otherwise subject to prior approval under 49 U.S.C. 11343(a).

[2]*Exemption of Certain Transactions Under 49 U.S.C. 11343*, 130 M.C.C. 449 (1984).

[3]Docket No. MC-F-17344, *Gibraltar Carriers Corporation—Purchase Exemption—PeoSotter Transportation Company.*

[4]The motor exemption authority permits the Commission to exempt transactions governed by 49 U.S.C. 11341-11351. Small carrier transactions (i.e., where the parties' aggregate annual revenues do not exceed $2 million or where the acquiring entity is not a regulated carrier) are governed by 49 U.S.C. 10928, and thus beyond the scope of the exemption power. *See Small Carrier Trans. Reg—Motor Carriers of property*, 139 M.C.C. 804 (1985).

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actions were processed by the Commission.

In addition, because of more complex competitive considerations, intermodal exemption transactions including one or more motor property carriers are analyzed by the Commission on a case-by-case basis. Under such circumstances, parties must demonstrate that regulation of a transaction is not necessary to carry out the transportation policy of 49 U.S.C. 10101, and that a transaction is either limited in scope or regulation is not necessary to protect shippers from an abuse of market power.[6] During the last fiscal year, 17 intermodal exemption petitions were filed.

The Commission regulates the pooling of traffic by motor carriers.[7] Although competition is reduced or eliminated between pool participants, such transactions may nevertheless benefit the public. Pooling frequently enables carriers to enter or remain in markets in which they could not otherwise be by lowering their costs (*e.g.*, creating density or scale economies). The pooling carriers thus strengthen their ability to compete against other carriers and offer the possibility of lower prices to shippers. In the last fiscal year, 5 pooling applications were approved by the Commission.

Rates

In an open voting conference held May 8, 1996, in connection with a previously instituted proceeding, the Commission voted to adopt a policy statement holding that, in the post-Motor Carrier Act environment, the filed rate doctrine does not necessarily bar equitable defenses.[7] Under the policy statement adopted, the Commission will decide whether, under all relevant circumstances, collection of undercharges would be an unreasonable practice where an undercharge claim is filed by a carrier in court based on a tariff rate and a shipper claims that a lower, negotiated but unpublished rate was understood, and the court refers the case to the Commission for determination of the availability of equitable relief.

In another proceeding, the Commission exercised its authority under 49 U.S.C. 10706(d)(2) to expand the zone of rate freedom (ZORF) which, prior to its action, had permitted motor common carriers of property and freight forwarders to reduce or increase rates by 15 percent without Commission interference.[8] Finding that "there is sufficient actual and potential competition to regulated rates and that there will be benefits to carriers, freight forwarders, shippers, and the public from expanding the ZORF," the Commission adopted final rules which increased the zone by 5 percentage points on the effective date of the rule change, and again each year on the anniversary of the effective date, in the absence of Commission action to the contrary.

The Commission also reopened another proceeding proposing to reduce the notice period for independent-

[6] See *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

[7] Under 49 U.S.C. 11342(a), the Commission may approve a pooling agreement between motor common carriers of property where it finds that the agreement (1) will be in the interest of better service to the public or of economy of operation, and (2) will not unreasonably restrain competition.

[7] Ex Parte No. MC-177, *National Industrial Transportation League Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates*, ____ I.C.C.2d ____ (1996), served October 23, 1996.

[8] Ex Parte No. MC-169 (Sub-No. 1), *Automatic Expansion of Zone of Rate Freedom For Motor Common Carriers of Property and Freight Forwarders*, ____ I.C.C.2d ____ (1996).

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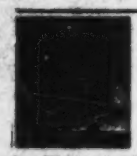

ly filed single-factor domestic motor-water property rates.[8] Under the proposal, rate reductions and new rates would become effective on 1 day's notice, rather than the 30 days' notice currently required. The Commission reopened the proceeding to request comments from the Federal Maritime Commission and to allow other parties to supplement the record.

In another proceeding, the Commission waived recordkeeping requirements for shipments of low value packages with respect to all general freight carriers.[10] The Commission found that allowing shippers the option to ship low-value packages under streamlined procedures with the opportunity for cost savings was consistent with the National Transportation Policy's goals of meeting the needs of shippers and consumers and allowing for innovative service options that are responsive to the marketplace. In an earlier decision in the same proceeding, the Commission granted United Parcel Service a waiver of the Section 1051.1 recordkeeping requirements.[11]

The Commission also amended 49 CFR 1312.37(c)(1) to eliminate the mandatory inland division breakout filing for international joint through-rate tariffs, and thus made such filings permissive.[12] In the same proceeding, the Commission amended 49 CFR 1312.37(b) to permit the filing of an abbreviated tariff that incorporates by reference tariffs filed with the Federal Maritime Commission.

On court remand, the Commission discontinued an investigation into motor carrier revenue needs that was begun in 1979.[13] The Commission concluded that the investigation should be discontinued because: the record was dated; the Commission may only order prospective relief to motor carrier shippers, not retroactive relief; intervening rate increases have minimized the impact of a rate rollback; and the general value of the investigation had been reduced because of numerous rate discounts by motor carriers.

The Commission proposed the revision of its collect on delivery (C.O.D.) regulation.[14] The ICC's proposal would allow each carrier to publish its own nondiscriminatory C.O.D. tariff provisions and repeal the recordkeeping requirements of 49 CFR 1052.4.

Finally, the Commission received two requests to implement rulemakings. In the first, the Regular Common Carrier Conference asked the Commission, among other things, to require carriers to pay discounts only to parties paying for transportation.[15] In the second, the Department of Transportation (DOT) asked the Commission to institute a rulemaking to develop rules clarifying when a shipment is in interstate or intrastate commerce.[16] Those petitions are currently under study.

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[8]Ex Parte No. MC-170 (Sub-No. 1), *Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates* (not printed), served May 6, 1986.

[10]No. MC-C-10839, *Petition for Waiver or Modification of the Recordkeeping Requirements for Shipments of Low Value Packages* (not printed), served March 28, 1986, see 49 CFR 1051.1.

[11]No. MC-C-10839, *Petition for Waiver or Modification of the Recordkeeping Requirements for Shipments of Low Value Packages* (not printed), served January 27, 1986.

[12]Ex Parte No. MC-175, *Revision Tariff Reg. Intl. Jt. Through Rates Ocean Car.*, 1 I.C.C.2d 978 (1986).

[13]Ex Parte No. MC-128, *Revenue Needs Standards in Motor Carrier General Increase Proceedings* (not printed), served August 15, 1986.

[14]Ex Parte No. MC-42, *Handling of C.O.D. Shipments* (not printed), served June 30, 1986.

[15]Ex Parte No. MC-180, *Petition for a Rulemaking on the Payment of Discounts by Motor Carriers of Property to the Nonpayor of the Freight Charges*, filed July 10, 1986.

[16]Ex Parte No. MC-182, *Petition of D.O.T. to Clarify When Single-State Movement is in Interstate or Foreign Commerce*, filed September 9, 1986.

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Rate Bureaus

During fiscal year 1986, the Commission stepped up the processing of collective ratemaking agreements under 49 U.S.C. 10706, as amended by Section 14 of the Motor Carrier Act. This provision prohibited collective ratemaking for single-line traffic and was interpreted and implemented through Commission rulemaking.[17]

The Commission provisionally approved, subject to further changes, agreements that had been filed by the Household Goods Carriers' Bureau, Inc.[18], the Movers' and Warehousemen's Association of America, Inc.[19], the Pacific Inland Tariff Bureau[20], and the Maine Motor Rate Bureau[21].

The Commission dismissed the applications and revoked the antitrust immunity of the Chicago Suburban Motor Carriers Association, Inc.[22], Alaska Carriers Association, Inc.[23], National Association of Specialized Carriers, Inc.[24], and Automobile Transporters Tariff Bureau, Inc.[25]

Operating Rights

The Commission's operating rights policies and licensing practices reflected its continuing commitment to promote competition and efficiency in the motor property transportation industry. By observing relaxed entry criteria and decisional standards, encouraging motor carriers to pursue innovative service options, and permitting carriers to significantly expand their service potentials through reduced operating restrictions, the Commission's operating rights activity enhanced the competitive environment contemplated by the Motor Carrier Act.

Common carrier authorities issued under the Commission's simplified and expedited licensing procedures typically provided for the transportation of general commodities, with the usual exceptions[26] or other broad classifications, within nationwide or expansive regional territories. Such service authorizations were predicated on an applicant's fitness, willingness, and ability to provide the involved service; evidence that applicable statutory and administrative requirements would be observed; confirmation that operations would serve a useful public purpose and be responsive to a public demand or need;[27] and a general Commission finding that the requested transportation authorization would not be inconsistent with the public convenience and necessity.[28]

The Commission continued to accord aplicants wide latitude for responding to these licensing prerequisites. Applicants were permitted to develop their own evidence of operational fitness and service need, without the supporting documentation of other parties, and were required to present only representative evidence of

[17] *Motor Carrier Rate Bureaus—Impl P.L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981).

[18] Section 5a Application No. 1, *Household Goods Carriers' Bureau, Inc., Agreement*, (not printed), served January 24, 1986.

[19] Section 5a Application No. 4, *Movers' and Warehousemen's Association of America, Inc.—Agreement* (not printed), served September 11, 1986.

[20] Section 5a Application No. 22, *Pacific Inland Tariff Bureau—Amendment* (not printed), served May 30, 1986.

[21] *Maine Motor Rate Bureau Agreement*, 2 I.C.C. 2d 41 (1985) and 2 I.C.C. 2d 119 (1985).

[22] Section 5a Application No. 31, *Chicago Suburban Motor Carriers Association, Inc.* (not printed), served September 26, 1986.

[23] Section 5a Application No. 83, *Alaska Carrier Association, Inc.* (not printed), served September 12, 1986.

[24] Section 5a Application No. 67, *National Association of Specialized Carriers, Inc.* (not printed), served September 11, 1986.

[25] Section 5a Application No. 94, *Automobile Transporters Tariff Bureau, Inc.* (not printed), served September 24, 1986.

[26] Classes A and B explosives, household goods, and commodities in bulk.

[27] See 49 U.S.C. 10922(b)(1).

[28] See the proviso to 49 U.S.C. 10922(b)(1).

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the need for a proposed service.[29] At the same time, the Commission continued to enforce statutory protest standards that strictly limit the circumstances under which competing carriers may oppose requests for operating authority.[30] Taken together, these policies represented inducements to motor carrier entry and promoted the competitive transportation marketplace and the variety of service options contemplated by the Motor Carrier Act of 1980.

The Commission's general licensing policy favors unrestricted grants of authority to motor property carriers, consistent with judicial holdings;[31] however, the Commission required applicants for general commodities authority that embraced bulk service affirmatively to establish their fitness to meet the specialized service features of bulk commodities and a corresponding need for bulk operations.[32]

Corresponding evidentiary standards were imposed on applicants seeking to provide bulk service pursuant to specified commodity authority, in accordance with the Commission's interim policy statement on the matter pending adoption of final specified commodity bulk restrictions rules.[33] The Commission continued to review comments filed in response to a supplemental bulk rulemaking, and the interim approach it announced in that proceeding was ratified by a court decision that expressly extended to specified commodity applications the specialized fitness and need bulk licensing prerequisites imposed by the previous American Trucking Association (*ATA*) line of cases in the general commodities context.[34]

This recent *ATA* decision also directed that the Commission require applicants seeking to provide contract carrier service in Alaska and/or Hawaii to demonstrate their fitness to serve in the non-contiguous states and a representative need for such operations.[35] Consistent with the court's mandate, the Commission limited a contract carrier's territorial service descriptions to 48-state authority in instances where an applicant did not present the specialized supporting evidence for Alaska or Hawaii service.[36] With this limited exception conforming with the court's mandate, the Commission otherwise observed the statutory provision that contract permits not be geographically limited.[37]

Contract carriage continued to represent the largest motor carrier licens-

[29]See, e.g., No. MC-143812 (Sub-No. 27), *Herman Van Diest Trucking, Inc., Extension—Commodities in Bulk Nationwide* (not printed), served December 24, 1985, *citing Rules Governing Applications for Operating Authority*, 364 I.C.C. 508, 531-533 (1980), *aff'd. sub nom. American Transfer & Storage Co. v. I.C.C.*, 719 F.2d 1283 (5th Cir. 1983). *See also*, No. MC-195688, *A.L. Kirk Trucking, Inc.—Nationwide Common and Contract Carrier Application* (not printed), served January 3, 1986.

[30]See, e.g., No. MC-184794, *Kirk Noel Contract Carrier Application* (not printed), served November 12, 1985, and No. MC-184882, *E.W. Rominger, Common and Contract Carrier Application* (not printed), served October 13, 1985.

[31]*See American Trucking Assn's, Inc. v. I.C.C.*, 659 F.2d 452 (5th Cir. 1981), *clarified and enforced by mandamus* in 669 F.2d 958 (5th Cir. 1982), *cert. denied*, 400 U.S. 1022 (1983).

[32]*See, e.g.*, No. MC-194682, *E.W. Rominger, supra.*

[33]Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)* and Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions From Authorities of Motor Carriers of Property*, notices of proposed supplemental rulemaking, 49 Fed. Reg. 27182 (July 2, 1984).

[34]*American Trucking Assn's., Inc. v. I.C.C.*, 770 F.2d 535 (5th Cir. 1985).

[35]*Id.*

[36]*See, e.g.*, No. MC-160259 (Sub-No. 5), *Arbor Freight Service, Inc., Extension—Nationwide Contract Carrier Service* (not printed), served August 21, 1986; No. MC-189313, *N.B. Enterprises, Inc., Contract Carrier Application* (not printed), served April 8, 1986.

[37]49 U.S.C. 10923(d)(1). *See, e.g.*, No. MC-188239, *The Kendra Corporation, Contract Carrier Application* (not printed), served April 3, 1986.

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ing growth area during the past fiscal year. Attracted by the prospect of pursuing innovative and flexible service options under expansive permits, contract carrier applicants took advantage of the Commission's policy favoring industrywide service authorizations[38] by formulating their operating requests in terms of broad commodity classifications (typically general commodities) and shipper classes (for example, commercial shippers and receivers of the designated commodities).[39] A substantial number of industrywide permits were granted in the household goods area, as well,[40] reflecting the Commission's continuing view that household goods shippers compromise an appropriate, identifiable shipper class.[41] The Commission additionally permitted many carriers to maximize their service flexibility and achieve optimal equipment use and operating efficiency by obtaining both industrywide contract permits, other authority such as common carrier authority,[42] broker operations,[43] or a combination of all three types.[44]

As a further inducement to enhanced operating efficiencies and improved service features, the Commission permitted numerous carriers to broaden their service descriptions and to relieve their authorities of operating restrictions by use of expedited restriction removal application procedures.[45] In a corresponding effort to improve operatons and service, the Commission continued to oversee the deletion of facilities restrictions from existing authorities by reopening underlying operating rights proceedings.[46]

Consistent with general policies favoring broad service descriptions, the Commission also issued a decision interpreting its motor carrier routing restrictions.[47] That decision permits a carrier to "bridge" two irregular route authorities with a regular route authority at a common service point resulting in a nationwide, non-radial service authorization despite the presence of "no tacking" provisions in the respective certificates.[48]

During the past fiscal year, the Commission requested comments on a proposal to allow carriers to substitute for a rated freight bill (which now must be supplied to lessors when their

[38] *Issuance of Permits Authorizing Industrywide Serv.*, 133 M.C.C. 298 (1983), *dismissed as not ripe sub. nom. American Trucking Assn's., Inc. v. I.C.C.*, 747 F.2d 787 (D.C. Cir. 1984).

[39] *See, e.g.*, No. MC-148558 (Sub-No. 6), *Victor Shimonia, Extension—Nationwide Contract Service* (not printed), served July 1, 1986.

[40] *See, e.g.*, No. MC-164978 (Sub-No. 1(A)), *Finis Martin Extension—Nationwide Contract Carriage Application* (not printed), served February 19, 1986.

[41] *See, e.g.*, No. MC-109470 (Sub-No. 3), *Eldred Van & Storage Co., Inc. Contract Carrier Application* (not printed), served November 7, 1985, *citing* No. MC-1745 (Sub-No. 17), *Interstate Van Lines, Extension—Household Goods* (not printed), served August 23, 1983, as further explained in a decision of the entire Commission (not printed), served September 13, 1983.

[42] *See, e.g.*, No. MC-160259 (Sub-No. 4 and 5), *Arbor Freight Service, Inc., Extension—Nationwide Common and Contract Carrier Service* (not printed), served August 21, 1986.

[43] *See, e.g.*, No. MC-187963, *William Kachler, d/b/a Kachler Auction House, Contract Carrier and Broker Application* (not printed), served June 24, 1986.

[44] *See, e.g.*, No. MC-44827 (Sub-No. 1), *P.J. Murphy Moving & Storage Co., Inc., Extension—Common and Contract Carrier Household Goods Service* (not printed), served January 22, 1986.

[45] 49 CFR Part 1165. Rules pending on remand in Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions from Authorities, Motor Carriers of Property.*

[46] *See, e.g.*, No. MC-158558 (Sub-No. 3), *Eighteen Wheel Transportation, Inc.* (not printed), served October 16, 1985, *citing Eckert Trucking, Inc., Ext.—Building Materials*, 132 M.C.C. 829 (1982).

[47] 49 CFR Part 1042.

[48] No. MC-C-10949, *Trans-States Lines, Inc.—Tacking—Petition for Declaratory Order* (not printed), served January 2, 1986.

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compensation is a percentage of gross revenue) a computer-generated document or, in the case of contract carriers, any other form of documents actually used for shipments if the substituted documents contain the same information indicated on the rated freight bill.[49] The proposal would also allow lessors access to original documents.

At an open voting conference held on June 25, 1986, the Commission also repealed its regulations governing the leasing by carriers of equipment and drivers to private carriers and shippers[50], and eliminated the requirement that lease agreements entered into by unregulated lessors of equipment to private carriers or shippers be for a minimum period of 30 days.[51] Both of these actions allow more efficient use of equipment yet do not compromise safety. In both types of leases, the Commission will continue to consider 5 previously announced criteria in determining whether a valid leasing arrangement exists.[52]

The Commission also considered adopting rules governing the removal and return of carrier identification devices upon the termination of a lease agreement.[53] This would assure that the Commission's leasing rules would not be used as a basis for finding carriers liable for tortious acts of a lessor which continued to display a carrier's identification device on its equipment after lease termination.

Finally, the Commission addressed several jurisdictional issues in the licensing area. Concerning exemptions from licensing regulations, the Commission recognized a commercial zone embracing the four southernmost Texas counties of Cameron, Hidalgo, Starr, and Willacy for purposes of property transportation only.[54] The Commission also discontinued a proceeding considering interchange policies at international boundaries[55] and, at a party's request, held in abeyance a request to expand the commercial zone of Nogales, Arizona.[56]

In a declaratory order proceeding, the Commission found the transportation of carpet between points within Texas, following a prior movement from a point in Georgia, to be part of a continuous interstate movement subject to Commission jurisdiction and lawfully performed under a storage-in-transit tariff provision.[57] In a similar context, the Commission found that property movements between two Oregon points routed through a Vancouver, Washington, terminal were interstate in nature, and that the terminal routing did not constitute a subterfuge or bad-faith attempt to circumvent intrastate regulation.[58] In reaching this conclusion, the Commission ratified efficiency-

[49]Ex Parte No. MC-43 (Sub-No. 19), *Lease and Interchange of Vehicles (Documents in Lieu of Rated Freight Bills)* (not printed), served July 30, 1986.

[50]Ex Parte No. MC-43 (Sub-No. 17), *Authorized Carrier Lease of Equipment and Drivers to Private Carriers and Shippers*, _____ I.C.C. 2d _____ (1986).

[51]Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers to Private Carriers—Petitions for Modification*, _____ I.C.C. 2d _____ (1986).

[52]*Lease of Equipment and Drivers to Private Carriers*, 132 M.C.C. 756 (1982).

[53]Ex Parte No. MC-43 (Sub-No. 18), *Lease and Interchange of Vehicles (Identification Devices)* (not printed), served October 21, 1986.

[54]*Petition to Estab.—Commercial Zone Certain Counties in TX*, 133 M.C.C. 530 (1985), *petition for reconsideration denied* (not printed), served August 5, 1986.

[55]Ex Parte No. MC-73 (Sub-No. 1), *Interchange Policies at International Boundaries* (not printed), served February 7, 1986.

[56]Ex Parte No. MC-37 (Sub-No. 39), *Petition to Expand Commercial Zone at Nogales, AZ.*

[57]No. MC-C-10963, *Armstrong World Industries, Inc.—Transportation Within Texas—Petition for Declaratory Order*, _____ I.C.C.2d _____ (served April 23, 1986).

[58]No. MC-C-10930, *Gene Maudlin, Oregon Public Utility Commissioner v. Southwest Delivery Company, Inc.* (not printed), served July 1, 1986.

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based "reasonableness tests" for determining whether operations properly are considered interstate commerce. These focused on whether involved routings were reasonably direct and employed either to permit efficient processing of traffic through a principal terminal or to permit the consolidation of interstate and intrastate traffic to facilitate complete service for a consignor.[59]

The Commission additionally decided not to implement a proposal to add 11 categories of emergency situations to the 5 that can be handled under General Temporary Order No. 22.[60]

Insurance

During the past fiscal year, high premiums and the limited availability of bodily injury and property damage (BI&PD) insurance coverage continued to plague property and passenger motor carriers. Likewise, property brokers encountered difficulties in obtaining surety bonds covering their operations.

Under the law, the Commission may not issue operating authority until carriers obtain a statutorily required bond, insurance policy, or other type of approved security, and the authorities remain in effect only if carriers continuously maintain such coverage.[61] The same restrictions apply to property brokers. Moreover, under the Commission's regulations, motor common carriers must maintain cargo liability insurance coverage.[62]

The Commission's rules require carriers or their insurers to file evidence of the statutorily required security in the form of Certificates of Insurance with the Commission. These certificate filings remain in effect, and continuously afford public protection, regardless of the policy terms, until 30 days after the Commission receives notification from the insurer that the policy has been cancelled. Unless replacement certificates are timely filed, carriers cannot perform interstate operations and are subject to having their operating authorities revoked. During the year, a record total of over 83,000 filings, including new and replacement Certificates of Insurance and Cancellation Notices, were received by the Commission from carriers and insurers. There were in excess of 2,000 operating authorities involuntarily revoked by the Commission for lack of adequate insurance coverage.

The required amounts of BI&PD insurance for property carriage of nonhazardous materials in vehicles over 10,000 pounds is $750,000; for hazardous materials, $1 million; for Class A and B explosives and certain other hazardous materials, $5 million. Passenger vehicles of 16 passengers or less are required to have $1.5 million, and vehicles with a seating capacity of 16 or more passengers must have $5 million security. The required amounts of cargo liability are $5,000 for loss or damage of property carried on one vehicle and $10,000 aggregate for loss or damage to property occurring at any one time or place. Both the BI&PD and cargo protection provides coverage on a per-occurrence basis.

The Commission took a number of actions to help ameliorate the problems encountered by carriers due to increased insurance rates in fiscal year 1986. The Commission opened a pro-

[59] *Id., citing Pennsylvania P.U.C. v. Arrow Carrier Corp.*, 113 M.C.C. 213, 220 (1971).

[60] *Special Temporary Authority Procedures*, 133 M.C.C. 563 (1986).

[61] 49 U.S.C. §10927

[62] 49 C.F.R. Part 1043.2(c), *Motor Common Carriers: Cargo Liability.*

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ceeding to investigate the circumstances that led to the inability of carriers to acquire insurance and the difficulty in retaining and renewing insurance coverage.[63] The Commission determined that such problems warranted a close examination to identify the scope of the problem, its causes, and the Commission's role, if any, in fashioning remedies. After the comment period had closed, the Commission decided to reopen the investigation proceeding[64] for the purposes of: (1) proposing amendments to the regulations[65] governing self-insurance for BI&PD claims, and (2) allowing the proposed amendments to serve as interim rules until the Commission adopted final rules. This enabled a timely response to the cost and availability problems for those carriers who might decide to seek self-insurance authority.

Because of the intense interest in general insurance problems, and in response to a request that the Commission appoint a hearing examiner to conduct informal conferences with the affected groups to discuss the cause and extent of the problems and to recommend solutions, the Commission instituted a proceeding to provide such a forum chaired by Commissioner Paul H. Lamboley.[66] This proceeding consolidated comments initially received by the Commission in the Ex Parte No. MC-178 proceeding, and also encompassed the information developed by the conference groups set up by Commissioner Lamboley in administrative, marketplace and legislative areas. At the close of the fiscal year, a decision was pending with respect to the adoption of final rules for self-insurance in this proceeding, and a final report including findings and recommendations also was being prepared by the conference groups in the proceeding for Commissioner Lamboley's certification to the Commission.

On September 30, 1985, May Trucking Company, of Payette, Idaho, submitted an application for authority to act as a self-insurer for bodily injury and property damage claims, which the Commission voted to deny without prejudice.[67] The denial was not a rejection of the self-insurance concept, but rather resulted from certain defects in the application and partly from the lack of contemporary guidelines. On December 31, 1985, May Trucking filed a petition to reopen the proceeding and provided additional evidence to satisfy the Commission of its qualifications to be a self-insurer. The Commission granted May Trucking self-insurance authority, with specific conditions which it believed were necessary to provide the public adequate safeguards, including the filing of quarterly and annual financial reports.[68]

At the close of the fiscal year, the Commission had decided 9 of the 34 applications received for self-insurance authority, most of which related to BI&PD claims, with a small number requesting self-insurance of the cargo liability requirements. Most of the applications were received in the latter part of the year after the interim rules were issued. While the Commission

[63]Ex Parte No. MC-178, *Investigation Into Motor Carrier Insurance Rates* (not printed), served October 31, 1985.
[64]Ex Parte No. MC-178, *Investigation Into Motor Carrier Insurance Rates*, (not printed) served April 22, 1986.
[65]49 C.F.R. Part 1043.5 (a), *Qualification as a Self-Insurer and Other Securities or Agreements.*
[66]Ex Parte No. MC-178 (Sub-No. 3), *Investigation Into Motor Carrier Insurance Rates, Conference of Interested Parties* (not printed), served May 5, 1986.

[67]No. MC-126527, *May Trucking Company—Application to be a Self Insurer* (not printed), served December 9, 1985.
[68]No. MC-126527, *May Trucking Company—Application to be a Self Insurer* (not printed), served April 22, 1986.

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has established interim guidelines and will adopt amended final rules, the cases are examined on a case-by-case basis to determine if each individual application merits self-insurance authority. This comports with the Commission's policy that there can be no lessening of its intent to ensure that carriers maintain adequate financial responsibility to protect the public.

Safety

Motor carrier safety was the Commission's predominant concern when evaluating the operational fitness of applicants for new or expanded authority. Consistent with the intent and focus of the Motor Carrier Safety Act of 1984,[69] the Commission continued its efforts to identify motor carriers with questionable safety records and to scrutinize more aggressively the safety profiles of applicants for authority.[70] About 265 licensing cases involving safety fitness were processed or pending by the end of fiscal year 1986, based on ratings prepared by the United States Department of Transportation (DOT). During the past fiscal year, the Commission granted: 130 one-year term certificates to carriers with conditional safety ratings; 20 applications by carriers with unsatisfactory safety ratings by conditioning the issuance of authority on the applicants' showing of an improved safety rating or otherwise compelling reasons why authority should be issued; and 29 unconditional licenses to carriers originally rated less than satisfactory that had obtained improved ratings from the DOT. The Commission denied 9 applications because the applicant's safety rating was unsatisfactory and dismissed two other cases. The Commission's scrutiny of carriers with less than satisfactory ratings has not been dependent on DOT intervention in licensing proceedings.

Where warranted on the basis of a carrier's continuing and willful failure to comply with the Federal Motor Carrier Safety Regulations of the DOT's Federal Highway Administration,[71] the Commission revoked and canceled operating authority.[72] In other instances, the Commission found an "unsatisfactory" DOT safety fitness rating grounds for denying new authority.[73] In some proceedings, applicants holding "unsatisfactory" safety ratings were given the opportunity to establish compelling reasons why authority nonetheless should be issued.[74] However, absent such evidence, the Commission generally acknowledged DOT as the primary agency charged with motor carrier safety oversight and deferred to DOT's "unsatisfactory" rating as the basis for denying operating authority.[75]

Typically in instances where applicants for authority held "conditional" safety ratings indicating DOT's willingness to accord such carriers the opportunity to improve their safety compliance records, the Commission granted the authority sought, subject to

[69]Pub. L. No. 98-554 (October 11, 1984).

[70]See, e.g., No. MC-127789 (Sub-No. 18), *Luppes Transport Company, Inc.—Nationwide Common Carriage* (not printed), served January 23, 1986.

[71]49 CFR Parts 390-399.

[72]See, e.g., No. MC-C-10977, *Federal Highway Administration* v. *Trails Trucking, Inc.* (not printed), served May 1, 1986.

[73]See, e.g., No. MC-143385 (Sub-No. 7), *Transport Robert (1973) Ltee Extension—Rob-Tran* (not printed), served June 23, 1986.

[74]See, e.g., No. MC-168921 (Sub-No. 1), *W.G. Brown, Inc., Extension—20 States* (not printed), served January 24, 1986.

[75]See, e.g., No. MC-174055 (Sub-No. 1) *James Connell Extension—Common Carrier Authority* (not printed), served June 27, 1986; No. MC-150526 (Sub-No. 8), *Yarmouth Lumber, Inc., Extension—Eastern United States* (not printed), served April 8, 1986.

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a one-year term limitation.[76] Such limited term authority was issued with the understanding that the involved operating rights would expire at the conclusion of the term unless the applicant established, in a petition for removal of the condition, that it was in full compliance with the terms and conditions of its authority, including pertinent statutory provisions and DOT and Commission regulations.[77] Where an evidentiary record failed to sustain such findings, the Commission denied petitions for removal of limited-term conditions and ordered the carriers in question to cease operations under the involved authority.[78]

In line with the Commission's aggressive stance on carrier safety, procedures were developed in fiscal year 1986 to ensure that carriers without adequate insurance were not issued licenses until evidence of proper insurance coverage was filed with the ICC.

Foreign Carriers

A statutory licensing moratorium prohibiting the Commission from issuing authority to carriers domiciled in Mexico, or owned or controlled by Mexicans, remained in effect during the fiscal year, as did President Reagan's order lifting the moratorium with respect to Canadian motor carriers.[79] As a result, the Commission continued to observe procedures promulgated for the enforcement of the licensing moratorium on Mexican domiciled, owned, or controlled applicants for authority.[80]

Also relative to foreign carrier licensing matters, the Commission implemented a provision of the Motor Carrier Safety Act of 1984 that required Mexican private carriers and exempt commodity transporters to obtain annually certificates of registration in order to operate in this country.[81] The Commission issued numerous foreign carrier certificates of registration to Mexican domiciled or controlled carriers seeking to transport exempt commodities or to provide private carriage services in the United States.[82] Further, the Commission processed a number of certificate of registration matters that required determination of the nationality or foreign carrier status of particular controlling interests; for example, where Mexican citizens residing in the United States indirectly controlled a transportation company;[83] where a Mexican domiciled company was the subsidiary of an American company that also participated in the involved transportation;[84] and where an American manager and minority shareholder was alleged to have had "control" of an otherwise Mexican owned or controlled transportation operation.[85]

[76]See, e.g., No. MC-145806 (Sub-12), *General Trucking Company, Inc.—Extension—General Commodities Nationwide* (not printed), served December 3, 1985.

[77]See, e.g., No. MC-140865 (Sub-No. 139), *Prime, Inc., Extension—General Commodities Nationwide* (not printed), served August 21, 1986.

[78]See, e.g., *No. MC-110328 (Sub-No. 24), Roy A. Leiphart Trucking, Inc.* (not printed), served August 15, 1986.

[79]See 49 U.S.C. 10922(1). On September 23, 1986, the President extended, for a two-year period, the moratorium with respect to Mexican carriers.

[80]Ex Parte No. 55 (Sub-No. 43D), *Certification of Canadian or Mexican Ownership or Control of Applicants for Motor Common or Contract Carrier Authority*, 47 Fed. Reg. 42948 (September 29, 1982).

[81]49 U.S.C. 10530. *See Certificates of Registration of Certain Foreign Carriers*, 133 M.C.C. 511 (1985).

[82]See, e.g., No. MX-193570, *Jose Villarreal Quintana* (not printed), served August 7, 1986.

[83]Nos. MX-184735, *General De Ensambles, S.A. D/B/A Genesa, Application for Certificate of Registration 1985* and MX-186717, *Administracion de Maquiladoras, S.A. D/B/A A.M.S.A., Application for Certificate of Registration 1985* (not printed), jointly served December 2, 1985.

[84]No. MX-192022, *Electro Partes De Matamoros S.A. de C.V.* (not printed), served June 24, 1986.

[85]No. MX-185688, *Teofilo Covarrubias Villarreal Application for Certificate of Registration 1985* (not printed), served August 27, 1986.

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Household Goods

During fiscal year 1986, the Commission considered and granted many applications for contract carrier authority to transport household goods for the class of shippers identified as "persons (except individuals) as defined in 1 U.S.C. 1."[86] In so doing, the Commission continued to recognize that, as long as applicants for operating authority otherwise meet the licensing criteria for contract carriage, industrywide service designations and nationwide territorial authorization are appropriate and conducive to national transportation policy goals.

In numerous applications, carriers sought contract carrier authority to provide nationwide transportation of both general commodities (with exceptions) and household goods. Many were granted household goods authority upon a separate showing of a public need for the proposed transportation and the carriers' fitness, willingness, and ability to provide household goods transportation.[87] In a number of proceedings, however, the Commission determined that applicants were proposing simply to transport containerized household goods along with other general commodities traffic. The Commission advised such applicants that the transportation of containerized household goods without the provision of specialized service (such as packing or unpacking) or equipment normally required for household goods is not within the definition of household goods transportation and does not require specific household goods authority.[88] Additionally, consistent with a decision of the United States Court of Appeals for the Fifth Circuit,[89] applicants were advised that nationwide service authorizations could not include Alaska or Hawaii in the absence of a specific showing of a need for service in those States and the applicant's fitness, willingness, and ability to provide such service.[90]

In a significant pooling proceeding, the Commission approved the addition of 4 common carriers of household goods to a previously approved pool of 45 such carriers.[91] The Commission found that the public would benefit from the improved competition that should result from the efficiencies and economies inherent in pooled common carrier operations. However, finding that a particular statute was unambiguous in limiting the Commission's jurisdiction to pooling arrangements between common carriers,[92] the Commission denied the request of parties to extend pooling

[86]See, e.g., No. MC-171246 (Sub-No. 2), *Chaparral Van Lines, Contract Carrier Application* (not printed), served June 16, 1986; No. MC-42535 (Sub-No. 74), *Andrews Van Lines, Inc., Contract Carrier Application—Household Goods* served January 3, 1986; and No. MC-8944 (Sub-No. 4), *Johnson Storage & Moving Co. Extension—Household Goods Contract Service* (not printed), served October 11, 1985.

[87]See, e.g., No. MC-192821 (Sub-No. 1), *Thomas Transfer & Storage, Inc., Contract Carrier Application* (not printed), served September 25, 1985; No. MC-189286, *Paul Lindstrom Contract Carrier Application* (not printed), served May 1, 1986; and No. MC-169470 (Sub-No. 3), *Eldred Van & Storage Co., Inc., Contract Carrier Application* (not printed), served November 7, 1985.

[88]See, e.g., No. MC-118206 (Sub-No. 7), *Highway Auto Carrier, Inc.—Nationwide Contract Carrier Service* (not printed), served August 9, 1986; No. MC-178285 (Sub-No. 1) *Northland Services, Inc., Extension-General Commodities Contract Carrier Service* (not printed), served April 10, 1986; and No. MC-167181 (Sub-No. 2), *Vanguard Transportation, Inc., Extension—General Commodities Contract Service* (not printed), served November 6, 1985.

[89]*American Trucking Associations v. ICC*, 770 F.2d 535 (5th Cir. 1985).

[90]See, e.g., No. MC-146558 (Sub-No. 6), *Victor Shimonis, Extension—Nationwide Contract Service* (not printed), served July 1, 1986; No. MC-42137 (Sub-No. 9), *Victory Van Lines, Inc., Extension—Household Goods Contract Service* (not printed), served June 25, 1986; and No. MC-166780 (Sub-No. 1), *Behling's Transfer Ltd., Extension—Common and Contract Service* (not printed), served April 24, 1986.

[91]Docket No. MC-F-15793, *Andrew Van Lines, Inc., Fogarty Transportation, Inc., Mercury Van Lines, Inc., and Security Van Lines, Inc.—Pooling Application* (not printed), decisions served January 10, 1986, and May 29, 1986.

[92]49 U.S.C. 11342.

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authorization to include contract carrier traffic. In reaching its decision, the Commission emphasized that such arrangements among contract carriers are beyond the Commission's jurisdiction but are subject to antitrust laws.

Finally, the number of complaints received concerning household goods carriers during fiscal year 1986 was at the lowest level of any fiscal year since passage of the Household Goods Transportation Act of 1980. Figures for the fiscal year represent a 14 percent decline from the previous fiscal year, and an 11.5-percent reduction from those received in fiscal year 1983, the previous record-low year.

The Independent Trucker

Opportunities for independent truckers, authorized carriers, and private carriers to improve efficiency and effectiveness expanded during the past fiscal year as the result of several Commission actions. These actions were intended to provide additional owner-operator and carrier options for single-source leasing, to facilitate payments to owner-operators, and to realize potential benefits from technological advances in the verification of payment amounts due to operators.

The Commission instituted a rulemaking proceeding proposing that motor carriers be permitted to reduce costs by providing computer-generated printouts in lieu of rated freight bills at time of settlement with independent contractors, provided that the printouts contain the same information as rated freight bills.[83] Owner-operators would be permitted, upon request, to examine underlying documents.

[83]Ex Parte No. MC-43 (Sub-No. 19), *Lease and Interchange of Vehicles (Documents in Lieu of Rated Freight Bills)* [49 CFR Part 1057], served July 30, 1986.

The Commission also adopted final rules governing the removal and/or the return of carrier identification devices upon termination of a lease agreement. The rules authorize negotiations between parties, and permit carriers to withhold payments to equipment owners pending the removal and/or return of identification devices. The rulemaking was intended to resolve problems involving carrier liability for equipment owners who wrongfully continue to display a lessee carrier's identification device on equipment after a lease contract has been terminated.[84]

Fiscal year 1986 was the second full year during which owner-operators had the opportunity to benefit from the Commission's successful relaxed single-source leasing policy. The staff of the Commission's Office of Public Assistance continued to answer a large volume of inquiries from both owner-operators and shippers alike and counseled the parties on compliance and participation in this service. The relaxed single-source leasing policy is further enhanced by the Commission's decision to eliminate the requirement that private carriers and shippers negotiate single-source leases for a minimum period of 30 days in order presumptively to be engaged in valid proprietary transportation when using equipment and drivers from unregulated lessors.[85] Owner-operators already could engage in single-source leases with authorized carriers for periods of less than 30 days,[86] and the same option was extended to private carriers and ship-

[84]Ex Parte No. MC-43 (Sub-No. 18), *Lease and Interchange of Vehicles (Identification Devices)*, [49 CFR Part 1057], served October 21, 1986.

[85]Ex Parte No. MC-122 (Sub-No. 2), *Lease of Equipment and Drivers To Private Carriers—Petitions For Modifications*, served October 16, 1986.

[86]Ex Parte No. MC-43 (Sub-No. 15), *Elimination of Thirty Day Leasing Requirement*, 133 M.C.C. 382 (1984).

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pers. Eliminating the 30-day minimum lease period should result in greater competition, more efficient use of fuel and equipment, additional sources of drivers and equipment, increased rents for equipment, and improved cash flow. Private carriers that cannot utilize a minimum 30-day lease will represent a new market for owner-operators who desire leases of shorter duration.

More than 1,900 grants of operating authority to owner-operators have been issued under the Motor Carrier Act, and of these, 283 were granted in fiscal year 1986. In many instances, one-on-one assistance was given to owner-operators seeking their own operating authority. The Commission also continued to assist owner-operators in the resolution of complaints against regulated motor carriers and property brokers. Almost 2,300 independent trucker complaints were received and acted upon, and the Commission's intervention resulted in the collection of approximately $520,000 on behalf of owner-operators.

Finally, through its Office of Public Assistance, the Commission continued its efforts to reach and inform independent truckers, owner-operators' associations, trucking magazines, and shippers of new opportunities made possible by these and other Commission actions during the past fiscal year.

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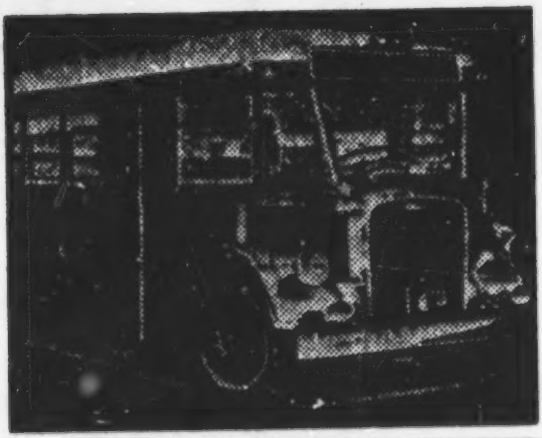

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BUS COMPANIES

General Financial Condition

Ridership levels of Class I intercity bus companies declined during fiscal year 1986 representing continuation of the downward trend in passengers carried that began in the early 1960's. Substantial discounts in airline fares by certain airlines and declining gasoline prices, which encouraged greater automobile usage, contributed to the further decline in bus ridership.

Commission data for ten of the nation's largest bus companies for the twelve months ending June 30, 1986, and June 30, 1985, show that operating revenues decreased 5.9 percent to $1.05 billion as revenue passengers carried fell 7.4 percent. Net carrier operating income increased about $75.5 million to $84.9 million, as Greyhound Lines, Inc. and Trailways Lines, Inc. reported improvements of $51.1 million and $21.5 million, respectively. Net income for all carriers rose $17.5 million to $46.1 million, despite a large decline in Greyhound's net income during the second quarter of 1986 resulting from non-operating expenses for severance pay incurred in the conversion of terminals from company ownership to independent commission agencies.

The bus industry's composite rate of return on shareholders' equity for the ten largest carriers rose to 12.65 percent from 5.93 percent. Owing to their successful efforts to control costs, the operating ratio (a measure of efficiency which shows expenses as a percentage of revenues) of the ten largest bus companies improved to 92 percent compared to 99.2 percent during the similar year-earlier period.

The two largest carriers, Greyhound and Trailways, which respectively account for about 60 percent and 20 percent of the bus industry's total Class I operating revenues, are concerned that their ridership losses may be permanent. Both carriers are attempting to improve operating results by reducing employee levels and abandoning unprofitable operations.

Rates

The Commission adopted an earlier proposal permitting bus companies to file schedules proposing general increases in fares to be effective at least 30 days after the date of filing rather than 45 days as previously required.[1] In addition, the Commission changed the protest and reply filing times for these proceedings to 8 days and 2 days, respectively, before the effective date of fare increases.

Consistent with its treatment of common and contract carrier trucking companies and railroads, the Commission also adopted final rules to reduce the 30-day notice period for independent rate filings by bus companies.[2] Under the rules, new rates may become effective on one day's notice. In adopting the change, the Commission concluded that the current competitive environment requires that passenger carriers be able to initiate pricing changes quickly and to respond without delay to the pricing initiatives of their competitors—particularly their intermodal competitors (*e.g.*, Amtrak and the airlines)—that are unencumbered by notice requirements.

The Commission considered several petitions filed by passenger carriers to increase intrastate rates after their requests had been denied

[1] Ex Parte No. MC-82 (Sub-No. 1), *Procedures in Motor Carrier Revenue Proceedings*, 1 I.C.C.2d 910 (1986).

[2] Ex Parte No. MC-178, *Short Notice Effectiveness For Independently Filed Motor Passenger Carrier Rates*, _____ I.C.C.2d _____ (1986).

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at the state level. In three of the cases, the Commission granted requests for increases in intrastate passenger fares.[3] In another case, the Commission lacked the authority to review the proposal and accordingly dismissed the proceeding.[4]

Operating Rights

Bus companies continued to take advantage of the reforms of the Bus Regulatory Reform Act of 1982. Fiscal year 1986 saw carriers file approximately 735 applications for operating authority, and nearly all were granted. Approximately 87 percent of the grants authorized nationwide charter and special operations, while the remainder authorized regular-route operations over specified routes. A large number of the routes included intrastate authority issued under the entry pre-emption provisions of the Bus Act, which permit the Commission to grant intrastate authority on a route over which a carrier holds interstate authority. Carriers filed two petitions under procedures that permit the Commission to pre-empt state authority and grant an increase in intrastate fares. Carriers filed seven petitions under pre-emption procedures to seek the Commission's permission to abandon intrastate operations over interstate routes.

The Commission granted nine carrier petitions that sought authority to discontinue intrastate and interstate operations over routes in eight states.[5] Five of these petitions were filed by Trailways Lines, Inc., and the remainder by Greyhound Lines, Inc.; Midwest Buslines, Inc.; Arrow Coach Lines, Inc.; and Texas, New Mexico, and Oklahoma Coaches, Inc.

The scope of intrastate authority granted by the Commission was interpreted in two complaint proceedings. In one, the Commission examined an intrastate operation to determine whether it was beyond the Commission's intrastate jurisdiction under the statutory prohibition against operations in the nature of special operations. Tho characteristics of the service were examined under traditional definitions of conventional regular-route service and special operations. The preponderance of the characteristics indicated special operations, and the carrier was directed to cease operations.[6] The Commission determined in the other proceeding that an operation was exclusively in intrastate commerce and outside the Commission's jurisdiction. The Commission noted that Congress intended that the intrastate provisions be used to eliminate state closed-door policies that burden carriers engaged in interstate operations over a route.[7]

[3]No. MC-C-10973, *Petition of Greyhound Lines, Inc. For Review of a Decision of the Tennessee Public Service Commission Pursuant to 49 U.S.C. 11501(e)* (not printed), served November 14, 1985; No. MC-C-10974, *Petition of Greyhound Lines, Inc., For Review of a Decision of the Alabama Public Service Commission Pursuant to 49 U.S.C. 11501(e)* (not printed), served October 3, 1985; and No. MC-C-10994, *Petition of Plymouth & Brockton Street Railway Company For Review of the Massachusetts Department of Public Utilities' Failure to Act on Proposed Intrastate Passenger Rate Increase Pursuant to 49 U.S.C. 11501(e)* (not printed), served June 9, 1986.

[4]No. MC-C-10979, *Petition of Bloom Bus Lines, Inc., For Review of a Decision of the Massachusetts Department of Public Utilities Pursuant to 49 U.S.C. 11501* (not printed), served November 21, 1985.

[5]See, e.g., No. MC-109780 (Sub-No. 94), *Petion for Trailways Lines, Inc. for Review of a Decision of the State Corporation Commission of the State of Kansas Pursuant to 49 U.S.C. 10935* (not printed), served February 5, 1986.

[6]*Gray Line Tours Co. of S. NV.* v. *Interstate Tours, et al.*, 133 M.C.C. 551 (1985), and, on appeal, No. MC-C-10997, *The Gray Line Tours Company of Southern Nevada* v. *Interstate Tours & Limousines, Inc.; Raymond M. Chenoweth, d/b/a Best West Express; Happy Time Express, Ltd.; and Adventure Charters and Tours, Inc.* (not printed), served September 11, 1986.

[7]No. MC-C-10943, *Airport Service, Inc.* v. *Lounge Car Tours Charter Company, Inc., and Lounge Car Tours, Inc.* (not printed)), served September 12, 1986.

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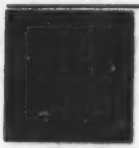

The Commission for the first time applied to passenger operations the criteria developed in cases involving the transportation of property to determine whether routings were being used as a subterfuge to avoid legitimate state regulation. The criteria were modified accordingly and a determination was made on the basis of the reasonableness of the carrier's routings. The Commission found that the point of interest of the tours, although just across a state border, was reasonable and that the interstate movement was legitimate.[8]

The Commission construes strictly an applicant's burden of proof to establish its safety fitness in all bus application proceedings. In one proceeding, an application was denied because of an unsatisfactory safety rating from the U.S. Department of Transportation (DOT) received by the applicant's owner in conducting the operations of an affiliated carrier.[9] A carrier that is rated "conditional" is granted authority limited to a one-year term only if the violations that led to the DOT rating do not jeopardize safe operations.[10]

The Commission concluded two passenger rulemaking proceedings initiated in 1979, after finding that the regulatory reforms of the 1982 Bus Act rendered them obsolete. One proposed modification to the superhighway and deviation rules would liberalize the circumstances under which regular-route passenger carriers could conduct operations over superhighways and alternate routes. In view of the Bus Act's eased entry provisions, the Commission found that carriers are assured the operating flexibility sought in the proposal.[11] Amendments to the Commission's rules governing adequacy of service, equipment, and facilities were rejected as imposing on carriers the very kind of regulatory constraints intended to be reduced by the Bus Act.[12]

The Commission is not authorized to exempt transactions involving passenger carriers, so parties proposing finance transactions continue to use the Commission's formal application procedures.[13] In the last fiscal year, the Commission approved eight applications for transactions subject to 49 U.S.C. 11343-11345a involving passenger carriers. Greyhound Lines, Inc., the nation's largest passenger carrier, was granted authority to segment its interstate passenger operations into four regional units, each serving a separate geographical area.[14] The purpose of this reorganization was to decentralize decisionmaking and thereby permit Greyhound to reduce costs and to provide more responsive service. At the request of the National Bus Traffic Association, Inc., the Commission also proposed to amend 49 CFR 1063.4(c) to allow a bus company to refuse to accept money as a checked

[8] *Gray Line Tours Co. of S. NV., supra.*

[9] No. MC-185941, *Joseph Matas Rubi, d/b/a The Transportation Authority Common Carrier Application* (not printed), served March 26, 1986, and on appeal (not printed), served June 23, 1986.

[10] No. MC-12909 (Sub-No. 9), *Kerrville Tours, Inc., Extension—Regular Route Service Between Meridian, MS, and Montgomery, AL* (not printed), served July 18, 1986.

[11] Ex Parte No. MC-65 (Sub-No. 6), *Passenger Motor Carrier Superhighway and Deviation Rules* (not printed), served September 11, 1986.

[12] Ex Parte No. MC-95 (Sub-No. 3), *Rules Governing the Adequacy of Interstate Motor Common Carrier Passenger Service* (not printed), served March 3, 1986.

[13] See 49 U.S.C. 11343-11345a and 49 CFR 1182-1183.

[14] No. MC-FC-82959, *Eastern Greyhound Lines Co., Central Greyhound Lines Co., Southern Greyhound Lines Co., and Western Greyhound Lines Co.—Transferees—Greyhound Lines, Inc.*

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baggage article for which it incurs loss or damage liability.[15]

Service

In fiscal year 1986, the Commission's field offices processed 261 service complaints from passengers utilizing intercity bus service. This constituted a 50-percent increase over the number of similar complaints received during fiscal year 1985, which itself had reflected a decrease of 35 percent from the level registered during fiscal year 1983 and 1984. The majority of the complaints in fiscal year 1986 primarily concerned delayed service in relation to published schedules, failure to provide scheduled service, and occasional instances of service failure.

In addition, 47 complaints involved overcharges in connection with the rates or charges published in the tariffs which govern what the carriers can lawfully assess for services provided. Thirty-three complaints involving claims handling were also made against carriers.

The Commission's field staff, under its Office of Compliance and Consumer Assistance, conducted compliance surveys at the headquarters facilities of 30 bus companies. Areas of noncompliance that were found in 25 of the surveys were handled administratively for correction. Four bus companies were found by survey to be in compliance, and the survey of one bus company invited further Commission investigation.

The Commission continued a program of bus inspections at tourist attractions in an effort to identify compliance with the Commission's operating and insurance regulations. This program involved the inspection of 399 buses and resulted in the discovery of 46 incidents of noncompliance. These violations were corrected through administrative procedures following further investigation where needed.

Passenger carriers continued to experience difficulties in obtaining and maintaining minimum required levels of insurance coverage or other financial security for the protection of the public and continued operations. The ability of some carriers to maintain stable profit margins was affected by insurance problems. Insurance cancellations resulted in others becoming the subject of revocation proceedings when they could not obtain or afford the cost of maintaining minimum required levels of insurance. Throughout the fiscal year, the Commission's field staff devoted considerable attention and effort toward bringing passenger carriers into compliance with the Commission's insurance requirements.

[15]Ex Parte No. MC-95 (Sub-No.4), *Practices of Motor Common Carriers of Passengers—Checked Baggage Prohibitions and Liability Exemptions* (not printed), served July 22, 1986.

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FREIGHT FORWARDERS AND WATER CARRIERS

Freight Forwarders

The Commission denied a petition by several motor carriers seeking modification of prior decisions which found that freight forwarders serving the United States Government can use a carrier's Section 10721 rates.[1] Under this Section, motor common carriers transporting property for the government may do so at reduced rates. Carriers routinely negotiate such rates with the government, but, under 49 U.S.C. 10766, common carriers also negotiate and enter into contracts with freight forwarders. The petitioning carriers complained that allowing forwarders to take advantage of Section 10721 rates that motor carriers have established with the government when the rates are lower than the negotiated Section 10766 rates places the motor carriers at a competitive disadvantage.

In denying this petition, the Commission noted that the objective of Section 10721 is to give the federal government transportation at the lowest possible cost, and it found that allowing freight forwarders to use the motor carriers' Section 10721 rates furthers this objective. Motor carriers are not obliged to deal with forwarders, and carriers are free to decide whether they are willing to assume the alleged higher risks involved in dealing with forwarders at lower Section 10721 rates in order to receive consolidated traffic.

In another significant rate proceeding, the Commission decided to establish regulations expanding the zone of rate freedom (ZORF) for motor carriers and freight forwarders an additional 5 percentage points (to 20 percent) on the effective date of the decision and again each year on the anniversary of the effective date, in the absence of Commission action to the contrary.[2] The Commission noted that, since enactment of the Motor Carrier Act, no complaints about the use of the ZORF provisions have been filed and experience has demonstrated that the automatic expansion of the ZORF is highly unlikely to produce unreasonably high rates.

Legislation designed to deregulate the freight forwarder industry was introduced during fiscal year 1985.[3] That bill would end the Commission's regulation of surface freight forwarders, with the exception of household goods forwarders, and would place them on a more competitive footing with other freight intermediaries. Final Congressional action on the bill was near as fiscal year 1986 came to a close,[4] and the Commission was preparing rulemakings to implement the legislation.

Water Carriers

In a court remanded application case,[5] the Commission allowed parties to serve interrogatories and document requests on each other to assure the submission of all relevant evidence prior to its decision.[6] Interrogatories and document requests were also allowed to develop the record in another similar application proceeding.[7]

[1] Ex Parte No. MC-107, *Transportation of Government Traffic* (not printed), served July 11, 1986, appeal pending.

[2] Ex Parte No. MC-169 (Sub-No. 1), *Automatic Expansion of Zone of Rate Freedom for Motor Common Carriers of Property and Freight Forwarders*, *supra*.

[3] The Surface Freight Forwarder Deregulation Act of 1985, S.1124.

[4] Shortly after the close of the 1986 fiscal year, on October 8, 1986, Congressional action approving the bill was completed. President Reagan signed the bill on October 22.

[5] *Cross-Sound Ferry Services, Inc. v. Interstate Commerce Commission*, 738 F.2d 481 (D.C. Cir. 1984).

[6] No. W-371 (Sub-No. 4), *Bridgeport & Port Jefferson Steamboat Company—Application for Common Carrier Authority* (not printed), served June 13, 1986.

[7] No. W-1401, *Groton Montauk Ferry Service, Inc.—Application For Common Carrier Authority* (not printed), served June 15, 1986.

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INTERMODAL TRANSPORTATION

Several significant intermodal consolidations required Commission action during fiscal year 1986, and the Commission continued to promote the growth of intermodalism through expedited decisionmaking.

In one proceeding, the CSX Corporation and the Sea-Land Corporation filed a joint application for the acquisition of control of Sea-Land by CSX. The Commission issued an interim decision establishing a schedule for the filing of evidence and argument by interested parties, and made a preliminary determination that Sea-Land is not a rail carrier and therefore not subject to the provisions of 49 U.S.C. 11343-45.[1] However, the issue was left open for further comment by the parties. The Commission also received an exemption petition for CSX to control two Sea-Land motor carrier subsidiaries.[2] Voting trusts were established while the Commission considers the joint application and petition for exemption.

In its 1984 decision approving CSX Corporation's acquisition of control of American Commercial Lines, Inc., the Commission imposed reporting and oversight conditions designed to monitor the effects of the acquisition on competition.[3] A Commission Administration Law Judge (ALJ) concluded in the first of these oversight reports that competiton had not been diminished by the transaction and that American Commercial Lines continues to enjoy financial health.[4] On that basis, the ALJ recommended against reopening the proceeding for further Commission consideration. In a subsequent decision, the Commission upheld the ALJ's recommendation and discontinued the oversight proceeding.[5] The Commission also found that the oversight conditions were adequate and that no violations had occurred.

Toward the end of the fiscal year, the Commission received a notice of intent to file an application from the Union Pacific Corporation seeking authorization to gain control over Overnite Transportation Company, a Class I motor carrier.[6]

The Commission continued to use its exemption authority to facilitate intermodal transactions that serve the public interest. For example, the Commission granted Burlington Northern, Inc. (BN) and a wholly-owned non-carrier subsidiary an exemption to acquire control over three Class I motor carriers.[7] The decision concluded that the exemption was consistent with the National Transportation Policy and that the acquisitions were limited in scope and would not result in an abuse of market power or a material reduction in competition. BN and its non-carrier subsidiary later filed an exemption petition to acquire three additional motor carriers and to merge two of

[1]Finance Docket No. 30900, *Joint Application of CSX Corporation and Sea-Land Corporation under 49 U.S.C. 11321* (not printed), served September 4, 1986.

[2]No. MC-F-17545, *Midatlantic National Bank and Sea-Land—Control Exemption—Sea-Land Freight Service and Intermodal Container Trucking, Inc.* (notice published in *ICC Register* July 15, 1986, at 4).

[3]Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.*, _____ I.C.C.2d _____ (1984), *affirmed sub nom., Crounse Corporation v. ICC*, 781 F.2d 1176 (6th Cir. 1986), *cert. denied*, _____ U.S. _____ (October 14, 1986).

[4]Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Lines, Inc.* (not printed), served July 25, 1986.

[5]Finance Docket No. 30300, *CSX Corporation—Control—American Commercial Line, Inc.* (not printed), served August 29, 1986.

[6]Finance Docket No. 31000, *Union Pacific Corporation, et al.—Control—Overnite Transportation Company*, notice of intent filed September 25, 1986.

[7]No. MC-F-16248, *Burlington Northern, Inc.—Control Exemption—Victory Freightway System, Inc.* (also embracing No. MC-F-16372, *Burlington Northern, Inc.—Control Exemption—Monkem Inc.*, and MC-F-16452, *Burlington Northern, Inc.—Control Exemption—Monroe Trucking, Inc.*) (not printed), served February 13, 1986.

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them into a single carrier. The Commission approved the exemption of these transactions.[8]

The Commission also used its exemption authority to eliminate unnecessary regulation when a non-carrier that owns a railroad also owns a motor carrier for which initial Commission operating authority is sought. Without exemption, two proceedings are required: one to secure motor carrier operating authority and the other to gain approval for common control under Section 11343. In several proceedings, the Commission exempted these transactions from the requirements of Section 11343.[9] The Commission found, on the facts of those cases, that motor carrier competition was intense, that there was no potential for abuse of market power, and that formal proceedings under Section 11343 were not necessary to carry out the National Transportation Policy.

[8]No. MC-F-17030, *Burlington Northern, Inc., and Burlington Northern Motor Carriers, Inc.—Control Exemption—Stoops Express, Inc., Wingate Trucking Company, Inc., and Taylor-Maid Transportation, Inc.* (not printed), served July 28, 1986.

[9]See, e.g., No. MC-F-17113, *Georgia-Pacific Corporation—Continuance-in-Control Exemption—Ashley, Drew, and Northern Railway Company, et al.* (not printed), served July 15, 1986; No. MC-F-16273, *Aluminum Company of America—Continuance-in-Control Exemption—REA Magnet Wire Company, Inc.* (not printed), served September 12, 1986.

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ENERGY AND ENVIRONMENT

Energy and environmental issues associated with Commission actions are addressed by the Commision's Section of Energy and Environment within the Office of Transportation Analysis. The Section of Energy and Environment fulfills its mission and function principally through the preparation of environmental assessments and environmental impact statements. During fiscal year 1986, the number and types of proceedings for which environmental documentation was prepared did not change appreciably in comparison with previous fiscal years. The emphasis of environmental documentation, however, has shifted somewhat as issues involving historic preservation and rail-to-trail conversions have occupied a greater share of staff time.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to identify important cultural resources that may be affected by agency actions, assess the extent of the effect, and develop measures to avoid or mitigate any adverse effects. Within the past fiscal year, the number of Commission proceedings involving historic preservation issues increased significantly. Examples involving some of the more complex and/or unique historic preservation issues include the Baltimore and Ohio's abandonment of its Georgetown Subdivision,[1] a case still pending, and the Boston and Maine's abandonment of its Hillsboro Branch.[2]

The Baltimore and Ohio case is unusual because of the number of important historical resources involved; perhaps as many as 100 eligible resources may be affected by the proposed 10-mile railroad abandonment. The Boston and Maine case is unique because it represents the first time that the historic preservation process was undertaken for resources not owned by a railroad applicant.

Both cases also represent a changing, more flexible approach to the Commission's compliance with the goals and objectives of NHPA. This more flexible approach is supported by the Advisory Council on Historic Preservation which recognizes the difficulties encountered in completing the historic preservation process within time frames imposed on the Commmission by the Staggers Rail Act of 1980.

In a related area, the Commission issued final rules implementing amendments to the National Trails System Act.[3] These amendments give interested parties the opportunity to use for public recreation purposes railroad rights-of-way that have been approved for abandonment while preserving the same rights-of-way for future rail use. Though in effect only a short time, significant public interest has been generated regarding the potential advantages of creating trails from abandoned rail corridors. The Section of Energy and Environment has endeavored to assist the public in its awareness and understanding of the potential applications of this new statute through outreach to individuals, state and local agencies, and public interest groups.

[1]Docket No. AB-19 (Sub-No. 112), *Baltimore and Ohio Railroad Co.—Abandonment—Georgetown Subdivision located in Montgomery Co., MD and the District of Columbia;* Environmental Assessment, served May 15, 1986.

[2]Docket No. AB-32 (Sub-No. 32), *Boston and Maine Corporation—Abandonment—Hillsboro Branch, New Hampshire;* "Report Concerning the Effect of Abandonment of a Segment of the Hillsboro Branch, Boston and Maine Railroad, Upon the Historical Integrity of the Monadnock Paper Mills, Bennington, New Hampshire," served January 22, 1986.

[3]Ex Parte No. 274 (Sub-No. 13), *Rail Abandonment—Use of Rights-of-Way as Trails* (not printed), served May 6, 1986.

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In addition to the two areas of emphasis just described, the Section of Energy and Environment continues to apply to all Commission proceedings the wide-ranging environmental review processes mandated by the National Environmental Policy Act. For example, the Section prepared a draft environmental impact statement on the potential effects of proposed new ferry service across Long Island Sound.[4] In June 1986, a supplemental environmental assessment for the proposed Santa Fe-Southern Pacific merger was completed,[5] and, in August 1986, an environmental assessment for the Mendocino Coast Railway's application to discontinue scheduled passenger service was served.[6]

[4]Docket No. W-271 (Sub-No. 4), *Bridgeport and Port Jefferson Steamboat Co.—Extension—Connecticut and New York Points, and* Docket No. W-1401, *Groton-Montauk Ferry Service, Inc.—Common Carrier Application*; Draft Environmental Impact Statement, served April 18, 1986.

[5]Finance Docket No. 30400, *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company—Merger—The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company*; Supplemental Environmental Assessment, served June 16, 1986.

[6]Finance Docket No. 30820, *Mendocino Coast Railway, Inc. Application to Discontinue Scheduled Train Service*, Environmental Assessment, served August 22, 1986.

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TARIFFS

Common carrier freight tariff filings in fiscal year 1986 slightly exceeded the record number of 1.4 million filings established in fiscal year 1985. The continued receipt of tariffs at such a high level indicates the intensity of competition among carriers brought about by deregulatory legislative actions begun in 1980. Of the total number of tariff filings, motor carrier tariff receipts remained constant at 1.1 million, while rail, water carrier, and international ocean/land intermodal tariffs increased significantly. Freight forwarder filings were substantially less than those recorded in fiscal year 1985. There was also a marked decrease in the number of common carrier passenger tariff filings during the past fiscal year.

Railroad contracts continue to be an attractive pricing alternative to tariffs and, as a reflection of this, the number of contracts filed with the Commission rose by 25 percent over the fiscal year 1985 level, which itself was a 53-percent increase over that for fiscal year 1984.

Informal Rate Cases

The Commission's Bureau of Traffic used its informal procedures to settle 6,600 cases concerning disputes over rate and tariff matters during the last fiscal year. This simple and inexpensive process permitted the settlement of most disputes without the need for the ICC's institution of time-consuming and costly formal procedures.

Every person or group, from large corporations to small consumers, has an opportunity to take part in the informal rate-settlement process, and each receives the same expert assistance that is provided by staff to the Commission itself in formal matters. A further public gain from informal settlements is the dissemination of a knowledge of pertinent law, of tariffs, and of each party's rights in order to prevent the future occurrence of similar disputes.

The Commission's special docket procedure permits rail and water carriers to seek authority to refund or waive the collection of admittedly unreasonable charges. A total of 588 special docket cases was processed authorizing reparations and waivers amounting to $16,787,305. The largest single adjustment was a waiver of undercharges of $1,289,328 on shipments of automobiles and automobile parts.

Revised rules were adopted which significantly reduced the amount of paperwork required for special docket cases involving amounts of $10,000 or less.[1] This revision has benefited carriers, shippers, and receivers alike, and has increased the efficiency of Commission staff, as well.

Through the Commission's informal complaint proceedings, rail or water shippers may prevent expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaints. If the carrier in question agrees that a particular movement involves overcharges or that the charges are unreasonable, refunds or waivers may be made without the need for formal procedures. The ICC processed 15 such applications on the informal complaint docket during fiscal year 1986.

[1]Docket No. 37130 (Sub-No. 3), *Special Docket Proceedings Exemption From Letter of Intent Requirements Involving Amounts of $10,000 or less*, 1 I.C.C.2d 921 (1986).

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Suspension/Special Permission Board

In January 1985, the Commission merged two employee boards, the Suspension Board and the Special Permission Board, that deal with tariff matters. This action was taken in response to the reduced levels of activity by both boards resulting from legislative changes and major revisions to regulations dealing with the publication of carrier tariffs.

Suspension matters involve new or revised rates, charges, or rule provisions concerning the interstate transportation services provided by the nation's rail, motor, freight forwarder, and domestic water carrier industries, and changes in rates or charges are filed with the Commission in tariff form. Upon the request of interested or affected parties opposing proposed tariff changes, the proposals are considered for possible investigation and/or suspension by the Commission's Suspension/Special Permission Board, or by the entire Commission. Decisions of the Board are subject to reconsideration by the Commission.

During fiscal year 1986, approximately 1,493,978 tariffs were filed with the Commission and 49 of those were protested (.003 percent). Of these proposals, 18 were suspended; 17 were permitted to become effective; 2 were allowed to go into effect but were investigated; and 11 were either canceled by the proposing carrier, had their protests withdrawn, or were rejected by the Commission.

There were 9 unprotested proposals considered by the Board on its own initiative. Of these unprotested proposals, 2 were suspended; 3 were permitted to become effective; 2 were allowed to go into effect but were investigated; and 2 were canceled by the proposing company.

Among the proposals considered by the Board were 14 general increases in, or restructuring of, motor common carrier rates and charges on general commodities filed by regional motor carrier bureaus[2], as well as 3 general increases in rates and charges applicable to household goods shipments.[3]

Although there were 26,171 rail contracts filed with the Commission, the Board did not receive any petitions or complaints requesting discovery of the essential terms of these rail contracts as authorized by 49 U.S.C. 10713.

Of significance to the Board's workload were shipper protests objecting to the cancellation of joint rates and through routes by certain railroads. Under the Commission's rules governing competitive access, many protestants were able to provide a strong indication that without suspension the proposed cancellations would effectively eliminate railroad competition.[4] By placing these cancellations under suspension, the affected parties were able to maintain the status quo, pending Commission decision.

Special permission matters also involve applications requesting relief from various tariff filing requirements of 49 C.F.R. 1312. In fiscal year 1986, the Board considered 1,039 applications of this type. Of those applications considered, 923 were granted; 12 were denied; 49 were either granted or denied in part; and 55 were withdrawn by the applicant before being decided.

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[2]Central & Southern, Central States, Eastern Central, Middle Atlantic, Middlewest, New England, Pacific Inland, Rocky Mountain, Southern Motor, and Niagara Frontier.

[3]Household Goods Carriers' Bureau and Mover's & Warehousemen's Assn. of America, Inc.

[4]Ex Parte No. 445 (Sub-No. 1), *Intermodal Rail Competition*, 1 I.C.C. 2d 822 (1986).

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As a result of the Commission's modification of procedural rules to encourage innovation as well as tariff simplification[5], the number of applications received by the Commission in fiscal year 1986 represented a considerable decline from the 2,724 applications considered in fiscal year 1985. The Board's decisions in this area benefited the public through reductions in costs and paperwork, more simplified tariffs, more efficient use of carrier equipment and resultant fuel savings, and the implementation of innovative pricing plans at a date earlier than ordinarily required.

By its approval last fiscal year of an application requesting authority to file an automated distance determination system in lieu of filing traditional printed mileage tariffs, the Commission for the first time authorized the generation of tariff data by means of electronic technology.[7] In another area, carriers were authorized by special order to customize pricing for individual shippers through the use of customer account code numbers in tariffs.[8] The Board also facilitated innovative pricing plans in international traffic when it authorized the publication of pricing plans that utilized postal codes for points in the Canadian provinces of Ontario and Quebec.

[5]Docket No. 37321, *Revision of Tariff Regulations, All Carriers*, served October 1, 1984.

[7]Special Tariff Authority No. 86-491.
[8]Special Tariff Authority No. 86-639.

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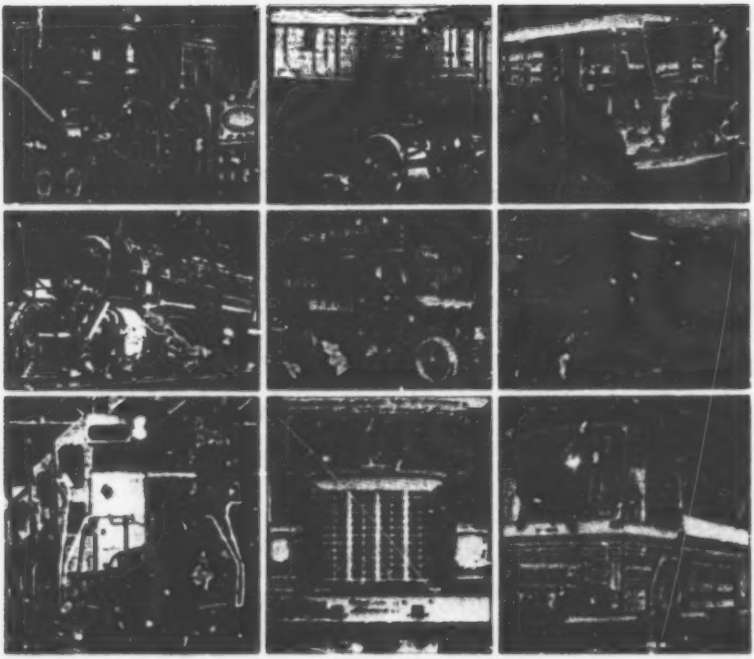

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ENFORCEMENT

During fiscal year 1986, the Commission directed its enforcement efforts to coincide with the trend toward reliance on marketplace solutions, rather than regulatory intervention, relative to compliance issues. In so doing, the Commission focussed on the general public interest in making decisions regarding programs to be implemented and decisions to be made concerning whether individual cases deserved special attention. The following discussion of the Commission's enforcement program groups the past fiscal year's cases under the following four violation categories: (1) anticompetitive practices; (2) consumer and small business protection; (3) fradulent activity; and (4) unsafe or uninsured operations.

During the past fiscal year, the Commission sought and obtained a large number of consent agreements and court-approved injunctions that ensure future compliance with the provisions of the Interstate Commerce Act and the ICC's regulations. In addition, a total of $111,474 was assessed in criminal fines, civil contempt penalties, and civil forfeitures.

Anticompetitive Practices

Encompassed within this category of cases are those dealing with violations of the antitrust laws as well as those which constitute violations of the anti-discrimination provisions of the Interstate Commerce Act.

The receipt of kickbacks for the tendering of freight is unlawful and anti-competitive since the selection of a carrier by a shipper is influenced by artificial forces outside the free marketplace. In September 1986, Trevor E. Mangold of Great Falls, Montana, was convicted of the felony of soliciting and accepting a kickback from an interstate motor carrier.[1] Mangold admitted that he had misused his position as a manager for a grain and fertilizer distributor and had exacted a payment from a trucking company to haul his employer's freight. Mr. Mangold received a two-year suspended sentence and a $5000 fine. He was also ordered to perform 50 hours of community work and to pay court costs.

On October 11, 1985, Charles Francis and Allen Walker were sentenced upon their guilty pleas to mail fraud charges.[2] Francis was charged with receiving kickbacks from Walker, the owner of a motor carrier seeking the business of Francis' employer. Each was fined and placed on probation. In addition, Francis was ordered to repay his employer the amount received in kickbacks.

Raymond Connelly was sentenced to six months in prison under a work-release program, five years probation, and a $7,500 fine.[3] Connelly had been found guilty of mail fraud as a result of his soliciting and receiving kickbacks from truckers while a traffic manager for Philadelphia Steel & Wire.

In another case, a shipper, Bio Clinic Co., of San Bernardino, California, appeared to be receiving an unfair competitive advantage by misdescribing freight tendered to Industrial Freight Systems, Inc. As a result, carriers interlining with Industrial were deprived of a portion of revenues. In addition to civil penalties, Bio Clinic was required to pay Industrial the amount owed, and Industrial was required to pass on

[1] *United States v. Trevor E. Mangold*, CR-86-03-GF (D. Mont., September 3, 1986).
[2] *United States v. Charles Francis, et al.*, CR-85-360 (E.D. Pa., October 11, 1985).
[3] *United States v. Raymond Connelly*, CR-85-293 (E.D. Pa., October 5, 1985).

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appropriate amounts to interlining carriers.

Consumer and Small Business Protection

Included within this program area are cases involving violations of household goods carrier regulations, owner-operator abuses, and unauthorized transportation by bus companies.

Trans-American Storage, Inc., a household goods carrier of Chicago, Illinois, entered into a Consent Agreement with the Commission concerning various types of violations. Trans-American Storage admitted that it had failed to comply with Commission regulations relating to orders for service and bills of lading and timely payment of owner-operator compensation settlements, and had otherwise failed to include all required provisions in its owner-operator leases. Trans-American Storage agreed to take appropriate corrective action and to refrain from such violations in the future.

Gangloff and Downham Trucking, Inc., was enjoined from violating the Commission's leasing regulations, loss-and-damage claims regulations, and overcharge claims regulations.[4] Specifically, the company was enjoined from violating regulations that require carriers to (1) pay owner-operators within 15 days after submission of documents covering trips in the company's service, (2) pay interest on escrow funds deposited with the company by its owner-operators, and (3) return escrow funds within 45 days of the owner-operators' termination of service on the company's behalf. The trucking company was also ordered to make restitution to owner-operators of funds illegally withheld by the company. Gangloff and Downham was also enjoined from failing to pay, declining to pay, or otherwise settling loss-and-damage claims within 120 days and overcharge claims within 60 days of the carrier's receipt of the claims.

Elite Moving & Storage, doing business as American Continental Van Lines (Elite), of Owings Mills, Maryland, was enjoined from violating Commission regulations governing the handling of loss-and-damage claims designed to protect the shipping public.[5] Elite was enjoined because of its failure to: (1) acknowledge household goods loss-and-damage claims within 60 days of receipt; (2) dispose of the claims within 120 days of receipt or advise claimants of the reasons for delays; (3) maintain separate claims files for proper identification in accordance with ICC regulations; and (4) allow complete inspection of its records by authorized ICC employees.

In March 1986, Mid-Western Transport, Inc., of Columbus, Indiana, was permanently enjoined from failing to comply with the Commission's owner-operator leasing, overcharge, and duplicate-payment regulations.[6] The Commission charged Mid-Western with making various deductions from compensation it owed owner-operators of leased tractor-trailers without authorization for such deductions in equipment leases. The Commission further charged Mid-Western with failing to handle overcharge and duplicate payment claims, and with failing to refund

[4] *Interstate Commerce Commission v. Gangloff & Downham Trucking Company, Inc.*, Civ. No. 586-00088 (N.D. Ind., August 13, 1986).

[5] *Interstate Commerce Commission v. Elite Moving & Storage, Inc.*, Civil No. JH86-4785 (D. Md., March 20, 1986).

[6] *Interstate Commerce Commission v. Mid-Western Transport, Inc.*, Civ. No. IP-85-1724C (S.D. Ind., March 14, 1986).

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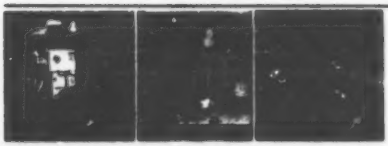

self-identified overcharges and duplicate payments within 30 days of receipt, as required by ICC regulations.

In another important case, Ryder/PIE Nationwide, Inc., of Jacksonville, Florida, entered into a formal agreement with the Commission to resolve consumer overcharge problems in the Puget Sound area of Washington State. An ICC investigation had determined that a number of motor carriers serving suburban and rural areas in western Washington were overcharging their customers. The other carriers involved previously entered into similar agreements with the Commission. Ryder/PIE, formerly Pacific Intermountain Express Co., agreed to publicly notify those of its customers who may have been charged more than the tariff provides by publishing a newspaper notice in the affected area, and to assist its customers in making refund claims. Ryder/PIE also agreed to comply with Commission overcharge regulations in the future. Those regulations require a carrier, upon discovery that overcharges may have occured, to make an investigation and to automatically institute appropriate refund procedures.

In another case involving owner-operator problems, a judgment of Civil Contempt was obtained against Lone Star Carriers, Inc., and its successor, United Cargo Express, Inc., both of Fort Worth, Texas.[7] Under the court's order, Lone Star was required to comply with a previously issued injunction which directed that the trucking company's payments to equipment lessors under permanent or trip lease agreements be made within 15 days after pertinent paperwork has been submitted by lessors.

In a judgment entered on April 29, 1986, a Federal District Court Judge found that Ace Doran Hauling & Rigging Co., had violated the Commission's leasing regulations by withholding up to $1,000 from final settlement pending the resolution of potential claims for cargo loss and damage attributable to the fault or neglect of an owner-operator.[8] The court held that deductions for potential claims could not be made until after the carrier had paid the claims. The court required Ace Doran to submit an accounting to the ICC within 30 days identifying those owner-operators who had suffered losses because of the illegal deductions, and to stipulate the amounts of losses or damage. The court additionally ordered the company to make restitution within 60 days to each owner-operator who had suffered losses from illegal deductions.

In another case of owner-operator abuse, Riechmann Enterprises, Inc., of Granite City, Illinois, was permanently enjoined from failing to comply with the Commission's regulations regarding the leasing of vehicles.[9] The Commission had alleged that Riechmann Enterprises, which had leased operator-owned tractor-trailers through its wholly owned affiliate, DGR Leasing, Inc., failed to include all of the required provisions in its leases and also failed to compensate owner-operators within the time period prescribed by Commission regulations.

The Commission also obtained a permanent injunction against WTS,

[7] *Interstate Commerce Commission v. United Cargo Express, Inc.*, Civ. No. CA-4-86-422K (N.D. Tex., May 27, 1986).

[8] *Interstate Commerce Commission v. Ace Doran Hauling & Rigging Co.*, No. C-1-84-926 (S.D. Ohio, April 29, 1986).

[9] *Interstate Commerce Commission v. Riechmann Enterprises, Inc.*, Civ. No. 86-5713 (S.D. Ill., March 13, 1986).

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Inc., of Fenton, Missouri, concerning leasing practices.[10] A complaint had been filed with the court after an ICC investigation had disclosed over 300 instances where WTS had paid owner-operators leased to it amounts less than provided for under the terms of the leases.

Jenkins Truck Line and Robert L. Jenkins (its president and chief executive officer), were enjoined from the failure to pay owner-operators within 15 days of the submission of documents necessary for the company to bill freight charges, unauthorized deductions from owner-operators' pay, and the failure to return escrow funds to owner-operators within 45 days after termination of the lease agreement.[11] The trucking company was also ordered to make restitution to owner-operators of funds illegally withheld by the company.

In a number of cases, bus companies were found to be operating without certificates issued by the Commission and without adequate public liability insurance. Such operations pose a significant danger to the travelling public, and a number of court actions ensued. For example, James C. Minor, doing business as Christian Movement Bus Service (CMBS) of San Antonio, Texas, was permanently enjoined from engaging in the for-hire motor transportation of passengers in interstate commerce without ICC operating authority.[12] Court action was taken after an investigation had revealed that the CMBS had been transporting passengers in interstate commerce without an ICC certificate. Although CMBS has applied for ICC operating authority, it has not been issued a certificate because of its failure to comply with the Commission's insurance requirements.

In a complaint filed in February 1986, the Commission charged L&L Bus Enterprises, Inc., and Clinton Hill Bus Co., both of Brooklyn, New York, and Anna Divanno, doing business as La Motta Travel Agency, of Philadelphia, Pennsylvania, with various violations.[13] The bus companies lacked both authority and the requisite insurance, and La Motta lacked appropriate operating authority. In these cases, temporary restraining orders were issued as were preliminary and permanent injunctions against all defendants.

In another case, Diane Steinke, doing business as Eau Claire Tours, of Eau Claire, Wisconsin, was permanently enjoined from engaging in interstate commerce without Commission operating authority and without having proper public liability insurance in effect and on file as required by Commission regulations.[14] Court action was taken by the Commission after an investigation had revealed that Eau Claire Tours had been advertising its services and had transported passengers in bus-vans between various locations in Wisconsin and Minnesota several times a week without Commission authority or proper insurance coverage.

Fraudulent Activity

Included within the category of fraudulent practices are cases involving violations of ethical standards gov-

[10] *Interstate Commerce Commission v. WTS, Inc., et al.*, Civ. No. NA 83-280-C (S.D. E.D. Mo., February 27, 1986).
[11] *Interstate Commerce Commission v. Jenkins Truck Line, Inc., et al.*, Civ. No. HA 83-280-C (S.D. Ind., October 23, 1985).
[12] *Interstate Commerce Commission v. James C. Minor, d/b/a Christian Movement Bus Service*, Civ. No. SA 86 CA-0935 (W.D. Tex., June 23, 1986).
[13] *Interstate Commerce Commission v. L&L Bus Enterprises, Inc., et al.*, Civ. No. CV-86-529 (E.D. N.Y., August 19, 1986).
[14] *Interstate Commerce Commission v. Diane Steinke, d/b/a Eau Claire Tours*, Civ. No. 85-C-949-C (W.D. Wisc., November 25, 1985).

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erning the conduct of attorneys and practitioners who represent clients before the Commission. In addition, violations of the regulations dealing with the handling of overcharge payment claims fall within this category, as do cases involving other fraudulent practices.

Commission investigations uncovered a number of violations of the code of conduct for practitioners appearing before the Commission. Several so-called "transportation consultant" companies controlled by persons not authorized to practice before the Commission were warned to cease such unauthorized practice. In addition, the Commission uncovered instances where attorneys had accepted payment from clients for the filing of applications with the Commission without actually having filed them, and then represented to their clients that authority had been granted. Such matters have been referred to pertinent state bar disciplinary boards.

In one case, Eugene D. Anderson wad disbarred from the practice of law in the District of Columbia and was ordered to make restitution.[15] Mr. Anderson had been found by the District of Columbia Court of Appeals to have neglected his client's affairs and to have engaged in conduct involving misrepresentations to his clients and to the Commission. He was also found to have held himself out as a lawyer and an ICC practitioner although he had failed for over five years to pay bar dues or to file a registration statement, and had been disbarred by the Commission, as well.

The Commission's regulations are designed to protect the shipping public by establishing time limits within which trucking companies must identify or acknowledge customer claims. Thereafter, the companies must either pay, decline to pay, or make reasonable settlement offers in satisfaction of the claims within designated time limits. In its continuing effort to ensure that carriers observe such regulations dealing with the handling of overcharge, duplicate payment, and loss-and-damage claims, a number of court actions were filed by the Commission.

Regarding the above, an injunction was entered against Mid-western Transport, Inc., of Columbus, Indiana, for violations of Commission regulations.[16] Concerning Mid-Western's failure to comply with overcharge and duplicate-payment regulations, a court's injunctive order required Mid-western to make an accounting to the Commission about all unrefunded, self-identified overcharges and duplicate payments received since January 1, 1984, and to make appropriate refunds.

In another case, the Commission entered into a consent agreement with a carrier that had been improperly handling loss and damage claims filed by shippers. One Way Freight Systems, Inc., of Oklahoma City, Oklahoma, agreed to pay, decline to pay, or make a firm compromise settlement offer within 120 days after receipt of loss-or-damage claims. If the company cannot resolve claims within 120 days, it must periodically notify claimants of claim status and the reasons for any delays. Additionally, FFE Transportation Services, Inc., Dallas, Texas, signed a consent agreement promising to abide by the Commission's claims regulations.

On September 17, 1986, a preliminary injunction was entered against

[15] *In Re Anderson, Eugene D.*, No. 86-657 (D.C. July 28, 1986) (unpublished order).

[16] Supra note 6.

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John Quiles, also known as John Kelley, individually and doing business as Gold Touch Movers, Universal Transport, National Moving & Storage, and Ace Moving & Storage, of Maspeth, New York.[17] The order enjoins the defendant from engaging in interstate transportation of household goods without ICC authority and adequate insurance. Since the defendants had in their possession a number of shipments, the order required that they deliver or store those shipments (at the shipper's option) by September 30, 1986.

Unsafe or Uninsured Operations

All motor carriers seeking operating authority from the Commission must establish that they are fit to conduct the proposed operations and to conform to statutory and administrative requirements, including Federal Motor Carrier Safety Regulations. Safety fitness is a primary concern of the Commission. When a motor carrier files an application for operating authority, its safety rating is checked with the Department of Transportation's (DOT) Bureau of Motor Carrier Safety (BMCS).

Some applicants with an "unsatisfactory" DOT rating have been granted authority, but subject to a condition that before the issuance of any operating authority, they must file an affidavit offering either evidence of an improved safety rating from the DOT's Bureau of Motor Carrier Safety, or compelling reasons why authority should be issued despite the existence of an unsatisfactory safety rating. Applicants also must serve copies of any affidavit on the BMCS and on the Commission's Office of Compliance and Consumer Assistance, and both may then seek intervention and challenge evidence submitted.[18] In such instances, however, public safety is the primary consideration and, as a practical matter, authority is not issued in the absence of an improved safety rating by DOT.

Applicants with conditional safety ratings are examined on a case-by-case basis and, if no cause is found to consider further the issue of an applicant's safety fitness, authority is granted but is limited to a one-year term.[19] At the end of the term, the carrier may seek review of its status or may even obtain relief at an earlier time should a DOT re-audit show a satisfactory safety rating.

The Commission also uses its suspension and revocation authority[20] where a motor carrier has demonstrated a continuing failure to comply with the Federal Motor Carrier Safety Regulations. The Commission suspended the operating authority of Bulifant Trucking, Inc., for a period of 30 days for serious, willful noncompliance with DOT's regulations.[21]

The Commission's insurance compliance program emphasizes the use of consent agreements to cure insurance deficiencies. The Commission's regulations specify minimum insurance levels for various types of carriers. When coverage expires or is cancelled, the Commission's field staff investigates and then seeks voluntary compliance

[17] *Interstate Commerce Commission v. John Quiles, d/b/a Gold Touch Movers, et al.*, Civ. No. CV-86-2923 (E.D. N.Y., September 18, 1986).

[18] No. MC-149170 (Sub.-No. 25), *Action Carriers, Inc., Extension—48 States Contract Carrier Service* (not printed), served September 18, 1986.

[19] No. MC-12907 (Sub.-No. 9), *Kerrville Tours, Inc., Extension—Regular-Route Service Between Meridian, MS and Montgomery, AL* (not printed), served July 18, 1986; *Jerry L. Kobs, Inc., Extension—48 States Contract Carrier Service* (not printed), served September 11, 1986.

[20] 49 U.S.C. Section 10925.

[21] Docket No. MC-C-10969, *Federal Highway Administration, Department of Transportation v. Bulifant Trucking, Inc.* (not printed), served June 10, 1986.

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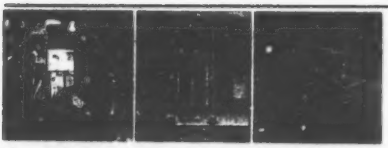

through consent agreements by which involved carriers agree not to operate until they have obtained appropriate insurance coverage. During fiscal year 1986, the Commission obtained 1,616 consent agreements in insurance cases. The Commission occasionally will take stronger enforcement action for lack of insurance where carriers fail or refuse to obtain prescribed insurance, and such actions would primarily include the filing of injunction complaints in Federal District Court. During the past fiscal year, 31 injunctions were obtained against carriers lacking adequate insurance.

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FINANCIAL OVERSIGHT

The Commission's financial oversight activities include auditing, accounting and reporting, financial analysis, cost analysis, and cost development. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules, the examination and analysis of accounts and financial statements, the analysis of cost and financial evidence submitted by parties to proceedings before the Commission, and the compilation and publication of transportation statistics and cost studies.

Accounting and Reporting Rulemaking

The Commission's prescribed accounting and reporting systems are continually reviewed in order to provide current useful information. This review program includes updating to correspond with generally accepted accounting principles (GAAP), and to reduce reporting burdens while retaining those requirements which provide data needed by the Commission.

During fiscal year 1986, the Commission approved the following changes:

- A final rule adopting a reporting revision that will require Class I railroads to submit a report from an independent public accountant stating that specified data in the "R-1" Annual Report of finances and operations have been examined, using agreed-upon procedures, and have been found in compliance with the Uniform System of Accounts for Railroad Companies. The report will also present any material exceptions which come to the attention of the accountant during the examination. This revision is an alternative to the extensive Commission audits performed in the past, and is effective for the R-1 annual reports for 1986 which are to be filed by March 31, 1987.[1]
- An accounting circular which adopted certain new accounting standards issued by the Financial Accounting Standards Board, the rulemaking body of the accounting profession.[2] The new standards will keep the Commission accounting systems up-to-date with generally accepted accounting principles.

The Commission is proposing to eliminate the Uniform Systems of Accounts and to revise periodic reporting requirements for Class I and Class II common and contract motor carriers of property and Class I motor carriers of passengers.[3] It is also proposing to substantially improve the Uniform System of Accounts of Railroad Companies by updating account texts, definitions, and instructions.[4]

Cost and Financial Analysis

The Commission analyzed cost and financial evidence submitted by railroads and other entities in connection with rates charged for the transportation of coal and other bulk commodities. These coal rate cases—involving hundreds of millions of dollars—affect households in the United States because they have an impact on the rates for electricity charged by coal-burning utilities. In one such proceeding, involving the first application

[1]Ex Parte No. 460, *Certification of Railroad Annual Report R-1 By Independent Accountant*, 1 I.C.C. 2d 902, (1985).
[2]Accounting Series Circular No. 199 (Bureau of Accounts), *Adoption of Accounting Standards*, issued February 10, 1986.
[3]Docket No. 38904, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Property* (not printed), served February 20, 1985; and Docket No. 39953, *Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers* (not printed), served June 26, 1985.
[4]Ex Parte No. 455, *Revision of the Uniform System of Accounts for Railroads* (not printed), served June 13, 1984.

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of the Commission's Coal Rate Guidelines,[5] it was determined that a coal shipper was charged transportation rates which exceeded a maximum reasonable level. At an open voting conference held on August 7, 1986, the Commission affirmed the decision of an Administrative Law Judge prescribing maximum allowable rates with an estimated result to the shipper of reparations of approximately $18 million.[6]

The Commission additionally continued its efforts to develop economically sound procedures for regulating captive traffic moving over the railroad systems in the United States. In this regard, a new proceeding was instituted to investigate the feasibility of applying constrained market pricing, the analytical framework used to assess the reasonableness of captive coal rates, to other traffic.[7]

The Commission determined that the railroad industry's cost of capital or fair rate of return for 1984 was 15.8 percent[8] and found that none of the nation's Class I railroads were revenue adequate in 1984 based on the existing standard.[9] The Commission, however, initiated a broad-based re-examination of its revenue adequacy standard.[10] This re-examination reflected the Commission's concern that the existing revenue adequacy procedures did not appear to produce a realistic picture of the financial condition of the railroad industry. The Commission also began a study to determine the railroad industry's current cost of capital for 1985.[11] The results of that study will be used to update the Commission's revenue adequacy findings.

In an open voting conference held on October 7, 1986, just after the close of fiscal year 1986, the Commission voted to make various changes to the manner in which the return on investment is computed for use in revenue adequacy determinations. A written decision reflecting the Commission's oral vote was issued on December 31, 1986.[12]

Throughout fiscal year 1986, the Commission analyzed cost and financial evidence submitted in connection with railroad applications to abandon selected line segments. These analyses took into account the avoidable loss or gain which would result from each abandonment through the determination of applicable revenues and avoidable costs.[13]

The Commission also analyzed cost and financial evidence submitted in connection with motor carrier requests for general rate increases. These analyses included an assessment of the revenue needed to cover operating costs and to provide a fair and reasonable return on invested capital. The Commission initially suspended seven such proposals, but subsequently permitted revised increases that will result in approximately $56 million less in shipping charges than originally proposed. The Commission additionally prepared analyses of

[5]Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide*, 1 I.C.C. 2d 520 (1985).

[6]Docket No. 38783, *Omaha Public Power District v. Burlington Northern Railroad Company*, ___ I.C.C.2d ___, served November 20, 1986.

[7]Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings* (not printed), served May 21, 1985.

[8]Ex Parte No. 456, *Railroad Cost of Capital—1984*, 1 I.C.C. 2d 989 (1986).

[9]Ex Parte No. 463, *Railroad Revenue Adequacy—1984 Determination* (not printed), served May 5, 1986.

[10]Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy* (not printed), served June 5, 1986.

[11]Ex Parte No. 464, *Railroad Cost of Capital—1985* (not printed), served September 5, 1986.

[12]Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*, served December 31, 1986.

[13]Ex Parte No. 274, *Revision of Abandonment Regulations*, 49 C.F.R. 1152 effective January 3, 1984.

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studies of the financial condition of the railroad industry and revenue adequacy issues that were submitted by shipper groups lobbying for railroad reregulation.

The Commission analyzed financial data which motor carriers of property and passengers submitted with applications requesting Commission approval for self-insurance for bodily injury and property damage claims and/or cargo claims. Numerous applications were filed, since, as a result of the nationwide insurance crisis, many motor carriers incurred substantial increases in premiums for the same or lower liability insurance coverage. The Commission's analytical efforts included the establishment of standards and data needs to evaluate financial fitness for self-insurance; the evaluation of whether applicants have the financial resources to fund proposed self-insurance programs; and the determination of appropriate actions to be taken, *i.e.*, the need for additional data; approval of self-insurance, including conditions or restrictions to assure the availability of sufficient resources to pay claims for the statutory minimum amount of coverage; or denials of applications.

The Commission continued to evaluate the financial condition of large transportation companies in order to determine whether they were financially able to provide adequate service to shippers. Reports were publicly released each quarter which contained the latest-quarter and twelve-month earnings, traffic volume, and rate-of-return data for Class I railroads, 100 of the nation's largest trucking companies, 15 of the largest household goods carriers, and 10 of the largest bus companies.

Cost Development

During fiscal year 1986, the Commission held an open voting conference to consider changes in railroad general increase procedures.[14] The conference resulted in the Commission deciding that future maximum Rail Cost Adjustment Factor (RCAF) rate levels would be linked directly to the quarterly RCAF, and that reductions in maximum rate levels be required when the RCAF decreased. The Commission also decided to establish a system of credits to hold down maximum RCAF rate levels in order to offset a severe drop in fuel prices which occurred in early 1986, and to correct the quarterly RCAF for forecast errors.

In addition, the Commission released four quarterly decisions that published the RCAF as a part of its new streamlined railroad general-increase procedures.

The Staggers Rail Act of 1980 requires the Commission to calculate an annual Cost Recovery Percentage (CRP) that serves as a threshold for Commission regulation of market-dominant rail traffic if it falls between 170 percent and 180 percent. The Commission requested comments on the options of adopting a new calculated CRP or on retaining the calculation currently in use.[15] Under either option, the Cost Recovery Percentage was in excess of 180 percent; the threshold would therefore remain at the maximum statutory level of 180 percent.

In another area, the Commission continued to hold in abeyance the adoption of the Uniform Railroad Cost-

[14]Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served December 27, 1985; April 18, 1986; June 20, 1986; and, September 19, 1986.
[15]Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served February 7, 1986.

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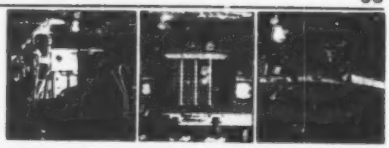

ing System (URCS) pending its review by the Railroad Accounting Principles Board (RAPB).[16] The RAPB was established by the Staggers Act, but legislation funding the RAPB was not passed until 1984. The Commission provided technical and analytical support to assist the RAPB in its review of the URCS.

The Commission continued to monitor nationwide diesel fuel prices and, upon request, provided weekly summaries of the price data to the public.

Directed Service

On September 26, 1979, the Commission concluded that the Rock Island Railroad had exhausted all of its operating funds, and directed the Kansas City Terminal Railway Company (KCT) to operate over the entire Rock Island system, beginning October 5, 1979. This directed-service authority which expired on March 23, 1980, was the first Commission directed-service experience with such a large and complex operation. As of September 30, 1986, $88.9 million of a total appropriation of $91.1 million had been disbursed to the KCT. All directed-service accounting operations were terminated on March 31, 1983, according to a Commission order.[17]

The KCT has continued to act as a government agent in the payment of various claims, most of which have been liquidated. KCT had requested an additional management fee for its efforts beyond the operational directed-service period, but this request was denied.[18]

Subsequent to the termination of directed service on March 23, 1980, and with advice from the Department of Transportation, the Commission authorized 24 railroads to operate certain Rock Island line segments without government funding. Consequently, a substantial portion of Rock Island service was continued. A number of railroads expressed an interest in purchasing Rock Island lines which they were operating, and some lines were acquired. The ICC also permitted the State of South Dakota and three railroads to rehabilitate certain trackage segments. Federal subsidies totalled approximately $5.4 million for the rehabilitation, of which $2.4 million were disbursed to South Dakota and $3 million to the three railroads.

Auditing

Functions performed by Commission's audit staff included the following:

- The performance of audits of most Class I railroads.
- Investigation of transactions between railroads and affiliated companies to determine the impact on the railroads' financial condition.
- The development of new audit procedures for use by independent accountants in performing railroad audits.[19]
- The performance of an annual internal audit of the Commission's fiscal operation and a review of the internal controls in place to determine compliance with the Federal Managers Financial Integrity Act of 1982.[20]

[16]Ex Parte No. 431, *Adoption of Uniform Rail Costing System for Determining Variable Costs for Jurisdictional Threshold and Surcharge Purposes* (not printed), served November 13, 1984.

[17]Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operation—Chicago, R.I.&P.* (not printed), served December 9, 1981.

[18]Directed Service Order 1398, *Kansas City Terminal Co.—Directed to Operate over Chicago, Rock Island and Pacific Railway Co., Debtor (William M. Gibbons, Trustee)* (not printed), served June 12, 1986.

[19]Ex Parte No. 460, *Certification of Railroad Annual Report R-1 by Independent Accountant*, 1 I.C.C. 2d 902 (1985).

[20]P.L. 97-255.

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COURT ACTIONS

The Commission's litigation continued to focus on the agency's interpretations and applications of the Motor Carrier Act of 1980, the Staggers Rail Act of 1980, and the Bus Regulatory Reform Act of 1982. Recent court decisions, which have largely upheld the Commission, clarified and further molded the appropriate extent of federal regulation of surface transportation under the current statutes.

During fiscal year 1986, the Office of the General Counsel represented the agency in 642 cases in the Federal courts. Of these, 510 were pending at the beginning of the fiscal year and 132 additional cases were instituted during the year. As of September 30, 1986, 159 of the cases had been concluded, leaving 483 pending in various stages of litigation. Of the cases concluded, ten were by the Supreme Court, 133 by the Federal Courts of Appeals, 13 by the Federal District Courts, two by the Special Court for the Regional Railroad Reorganization Act and one by the United States Court of Claims. The more significant decisions are discussed below.[1]

In the bus area, the Supreme Court declined to review Greyhound's authorization to discontinue service over a route between Houston and San Antonio, Texas and at 26 off-route points served by seven other routes in the state. The United States Court of Appeals for the District of Columbia Circuit had affirmed[2] the Commission's reversal of the State of Texas' decision to disallow the discontinuance. The D.C. Circuit also affirmed[3] a Commission decision granting special and charter operations authority to a government-subsidized carrier. However, two Commission decisions were remanded by the United States Court of Appeals for the Ninth Circuit because the court found, in a 2-1 decision[4], that under 49 U.S.C. 10922(c)(2)(B), the Commission lacks jurisdiction to issue intrastate authority without a nexus to interstate operations.

In the area of bus rates, the D.C. Circuit affirmed[5] the agency's approval of a proposal filed by the National Bus Traffic Association (at the urging of the National Glass Dealers' Association) to transport express shipments of automobile windshields and window glass under released rates whereby the bus carriers would not assume any liability for loss or damage during shipment. Prior to that time the bus companies would not transport windshields and window glass because of their susceptibility to breakage.

There was an array of cases involving motor carrier rates and tariffs. In one such proceeding, the Supreme Court declined to review a decision by the D.C. Circuit[6] affirming the Commission's exemption of motor contract carriers from the requirement of filing tariffs with the agency. In another case, the Eleventh Circuit affirmed[7] the Commission's decision to reduce the notice period for filing independent motor

[1]Some of the litigation involved non-transportation matters, such as Equal Employment Opportunity Act complaints, government contract matters, and Freedom of Information Act appeals. Because these cases have no direct impact on the development of transportation regulatory law and were not of any broad significance otherwise, they are not discussed here.

[2]*State of Texas* v. *ICC*, 758 F.2d 419 (5th Cir. 1985), *cert. den.*, 106 S. Ct. 129 (1985).

[3]*American Bus Assoc.* v. *ICC*, No. 85-1270 (not published) (D.C. Cir. March 31, 1986).

[4]*Airport Service, Inc.* v. *ICC*, 801 F.2d 1120 (9th Cir. 1986).

[5]*Drug & Toilet Preparation Traffic Conference, Inc.* v. *ICC*, 797 F.2d 1054 (D.C. Cir. 1986).

[6]*Central & Southern Motor Freight Tariff Assoc., Inc.* v. *ICC*, 757 F.2d 301 (D.C. Cir. 1985), *cert. den.*, 106 S. Ct. 568 (1985).

[7]*Southern Motor Carriers Rate Conference* v. *ICC*, 773 F.2d 1561 (11th Cir. 1985).

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carrier and freight forwarder rates (from 30 days to one day for rate reductions and to seven working days for rate increases). The court agreed that the shortened waiting periods for rates to take effect promoted beneficial price competition. Finally, the D.C. Circuit set aside[8] Commission decisions accepting an "average rate" rule tariff published by the Freight Forwarders Rate Bureau. The court held that a tariff must contain a definite method of determining the rate to be charged.

In a household goods case, the D.C. Circuit affirmed[9] the Commission's decision which allowed United Van Lines, Inc. to modify its existing traffic pooling agreement by requiring United's carrier-agents to tender to it all shipments moving over 1700 miles. This requirement was found to be fair to the agents that use United's name and operating authority, and to maintain a rational competitive balance.

In a significant proceeding, the D.C. Circuit affirmed[10] the Commission's action in revoking all of the operating authority of AAACon Auto Transport, Inc., a nationwide auto-driveaway carrier, for its persistent and unrepentant consumer abuse and fraud. The court noted the "overwhelming" evidence of AAACon's abusive practices and that the carrier had been afforded procedural due process.

In another significant decision, the D.C. Circuit affirmed[11] (except with regard to two minor cost calculations) the filing fees set by the agency pursuant to the Independent Offices Appropriation Act, at 31 U.S.C. §9701. The new fees remove much of the tax burden on the general public to pay for the Commission's operations. This is the first time an agency's promulgation of user fees—a task that has been described by the *D.C.* Circuit as "unscrambling eggs"[12] has been upheld against substantive challenges.

Turning to the rail area, the Federal courts decided a wide range of issues. The United States Court of Appeals for the Seventh Circuit affirmed[13] a district court decision[14] that had approved the Commission's decision[15] preferring the sale of the Milwaukee Railroad's core lines to the Soo Line Railroad over the Grand Trunk Corporation. The court rejected arguments that the price paid by Soo was not adequate under the Fifth Amendment to the Constitution, that the Commission lacked the power to authorize Soo to operate over tracks of the Seaboard Railroad (under trackage rights formerly held by the Milwaukee), and that different conditions should have been imposed for the protection of labor.

A reviewing court[16] also ruled that, under the Northeast Rail Service Act of 1981,[17] the abandonment by Consolidated Rail Corporation of lines that generate "insufficient revenues" is not

[8] *Regular Common Carrier Conference* v. *ICC*, 793 F.2d 376 (D.C. Cir. 1986).
[9] *Three Way Corporation* v. *ICC*, 792 F.2d 232 (D.C. Cir. 1986).
[10] *AAACon Auto Transport, Inc.* v. *ICC*, 792 F.2d 1156 (D.C. Cir. 1986).
[11] *Central & Southern Motor Freight Tariff Association, Inc.* v. *ICC*, 777 F.2d 722 (D.C. Cir. 1985).
[12] *Electronic Industries Ass'n* v. *FCC*, 554, F.2d 1109, 1117 (D.C. Cir. 1976).
[13] *In the Matter of Chicago, Milwaukee St. Paul and Pacific Railroad Company, Debtor*, 799 F.2d 317 (7th Cir. 1986).
[14] *In the Matter of Chicago, Milwaukee St. Paul and Pacific Railroad Company, Debtor*, No. 77 B 8999 (N.D. Ill. February 19, 1986).
[15] Finance Docket No. 28640 (Sub-No. 9), *Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Reorganization—Acquisition by Grand Trunk Corporation, et al.* (decisions served September 26, 1984 and January 11, 1985).
[16] *Minsi Rail Corp.* v. *ICC*, 638 F. Supp. 1346 (Spec. Ct. R.R.R. Act 1986).
[17] Section 1156, codified at 45 U.S.C. 747.

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reviewable by the Commission or the courts.

The courts reviewed two major rail acquisition cases, one involving the purchase of a water carrier and the other of a motor carrier. In the water case, the Sixth Circuit affirmed[18] the Commission's decision under the Interstate Commerce and Panama Canal Acts approving the acquisition by CSX Transportation of the nation's largest bargeline. However, the decision approving Norfolk Southern's purchase of a major motor carrier[19] was remanded because the court[20] determined that, under 49 U.S.C. 11344(c), the railroad must show that it will use the acquired motor carrier to advantage in its rail operations, rather than its overall operations as the Commission had found. The Congress effectively overruled[21] the court's decision (as to that purchase) twenty-two days after it was rendered, and the Commission has asked the Court to vacate its decision in light of Congress' action.

Regulatory exemptions, granted by the Commission pursuant to 49 U.S.C. 10505, were the subject of two court cases. In the first, the Supreme Court declined to review a lower court decision[22] affirming a Commission ruling that a state must adopt and apply Commission exemptions, in order to be certified to regulate intrastate rail transportation. In the second case[23], a court of appeals overturned the Commission's class exemption for abandonment of rail lines that have generated no traffic for at least two years, because of inadequate subsidiary findings.

In the first litigation under the reciprocal switching provision in 49 U.S.C. 11103(c), the court affirmed[24] a Commission decision declining to require such a switching arrangement because a competitive rail service already existed.

Several cases involved concerns of rail labor. There was a split in the circuits on the issue of whether Commission approval of a transaction under 49 U.S.C. 11343 (involving consolidations, mergers and acquisitions of control) carries with it an automatic exemption from the requirements of the Railway Labor Act with respect to labor disputes airising out of the transaction[25] or whether the Commission must make specific findings to create such an exemption.[26] The Supreme Court granted our request to review the issue.[27]

In another significant case, the United States Court of Appeals for the Second Circuit[28] joined the Seventh Circuit[29] in agreeing with the Commission's interpretation that labor protection is precluded in sales of lines under 49 U.S.C. 10905. The Supreme Court

[18] *Crounse Corp.* v. *ICC*, 781 F.2d 1176 (6th Cir.), *cert. denied*, 55 U.S.L.W. 3251 (Oct. 14, 1986).

[19] Finance Docket No. 30500, *Norfolk Southern Corp.—Control—North American Van Lines, Inc.*, 1 I.C.C.2d 842 (1985).

[20] *Int'l Brotherhood of Teamsters, etc.* v. *ICC*, 801 F.2d 1423 (D.C. Cir. 1986).

[21] In Section 3403 of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, ___ Stat. ___.

[22] *Illinois Commerce Commission* v. *ICC*, 749 F.2d 875 (D.C. Cir. 1984), *cert. den.*, 54 U.S.L.W. 3211 (Oct. 8, 1985).

[23] *Illinois Commerce Commission* v. *ICC*, 787 F.2d 959 (D.C. Cir. 1986).

[24] *Central States Enterprises, Inc.* v. *ICC*, 780 F.2d 664 (7th Cir. 1985).

[25] As the Eighth Circuit held in *Missouri Pacific Railroad Co.* v. *United Transportation Union*, 782 F.2d 107 (8th Cir. 1986), *petition for cert. filed*, 54 U.S.L.W. 3463 (U.S. Dec. 19, 1985) (No. 85-1054).

[26] As the D.C. Circuit had previously decided in *Brotherhood of Locomotive Engineers* v. *ICC*, 761 F.2d 714 (D.C. Cir. 1985).

[27] *Interstate Commerce Commission, et al.* v. *Brotherhood of Locomotive Engineers, et al., cert. granted*, 54 U.S.L.W. 3630 (U.S. March 24, 1986) (Nos. 85-792 and 85-793) (argued November 10, 1986).

[28] *Railway Labor Executives' Ass'n* v. *United States*, 791 F.2d 994 (2d Cir. 1986).

[29] In fiscal year 1985, the Seventh Circuit decided *Simmons* v. *ICC*, 760 F.2d 126 (1985) and *Simmons* v. *ICC*, 786 F.2d 1177 (1985).

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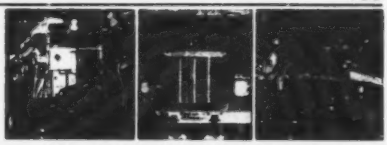

denied *certiorari* in the two Seventh Circuit cases.[30] In a related case (in which the Commission intervened),[31] the Second Circuit affirmed the denial of an injunction under the Railway Labor Act that would have interfered with the Commission's order approving a Section 10905 sale of a rail line.

In a third area concerning rail labor, the Ninth Circuit[32] was reviewing a Commission decision exempting from regulation the purchase of a carrier's rail line by two noncarriers—newly formed corporations that would, respectively, own and operate the line. The court affirmed that Section 10901 would otherwise apply (with discretionary authority to impose labor protection), rather than Section 11343 (with mandatory labor protection), but remanded for a further explanation of why the agency had declined to impose labor protection conditions on the selling carrier.

The Commission's 1983 revisions to its rail abandonment regulations[33] were affirmed in large part, with the court[34] remanding only those aspects concerning the calculation of avoidable labor and property tax costs for subsidy purposes and the use of the nominal cost of capital applied to a replacement cost investment base. Significantly, the court approved of the treatment of labor and property tax cost as avoidable after abandonment, even if those expenses are not ended immediately upon abandonment.

The Commission's first authorization of an abandonment after a purchaser defaulted on a Section 10905 sale was affirmed, along with the underlying abandonment approval.[35] The court agreed that the railroad carrier was not required to refile its abandonment application after the failure of the Section 10905 sale.

In the area of rail rate regulation, the United States Court of Appeals for the Eleventh Circuit ruled in a landmark case[36] that the Commission may determine whether a railroad's collection of undercharges (bills for the difference between the applicable tariff amount and the amount actually charged) would be an unreasonable practice, under 49 U.S.C. 10701(a), under certain circumstances. (The Commission has since adopted a similar policy on collection of undercharges by motor carriers).[37]

A court of appeals also affirmed[38] a Commission decision declining to prescribe a rail joint rate/through route arrangement absent a showing that the through route sought to be prescribed is more efficient than those that already exist and that the through route could not be made competitive through other less drastic means.

Finally, in a state court action (in which the Commission participated as *amicus curiae),* the Colorado Court of Appeals ruled[39] adversely that a muni-

[30] *Simmons* v. *ICC,* 54 U.S.L.W. 3460 (Jan. 13, 1986).
[31] *Railway Labor Executives' Ass'n* v. *Staten Island Ry. Corp.,* 792 F.2d 7 (2d Cir. 1986) (arising out of the same facts as the case in n.28, *supra).*
[32] *Railway Labor Executives' Ass'n* v. *ICC,* 784 F.2d 959 (9th Cir. 1986).
[33] *Revision of Abandonment Regulations,* 367 I.C.C. 831 (1983).
[34] *Illinois Commerce Commission* v. *ICC,* 776 F.2d 355 (D.C. Cir. 1985).
[35] *Simmons* v. *ICC,* 784 F.2d 242 (7th Cir. 1985, modified 1986).
[36] *Seaboard System Railroad, Inc.* v. *United States,* 794 F.2d 635 (11th Cir. 1986).
[37] Ex Parte No. MC-177, *National Industrial Traffic League—Petition to Institute Rulemaking On Negotiated Motor Common Carrier Rates,* ___ I.C.C.2d ___ (served October 29, 1986).
[38] *Pittsburgh and Lake Erie Railroad Co.* v. *ICC,* 796 F.2d 1534 (D.C. Cir. 1986).
[39] *Freedom Newspapers, Inc.* v. *Director, Department of Public Utilities, City of Colorado Springs,* ___ P.2d. ___, No. 85-CA 0021 (Colo. Ct. App. May 15, 1986).

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cipal rail shipper, a subdivision of the state, must disclose (under the Colorado Open Records Act) the terms of its rail rate contract. This is the first instance of which the Commission is aware that a court has ordered public dissemination of the confidential terms of a rail contract entered into under 49 U.S.C. 10713.

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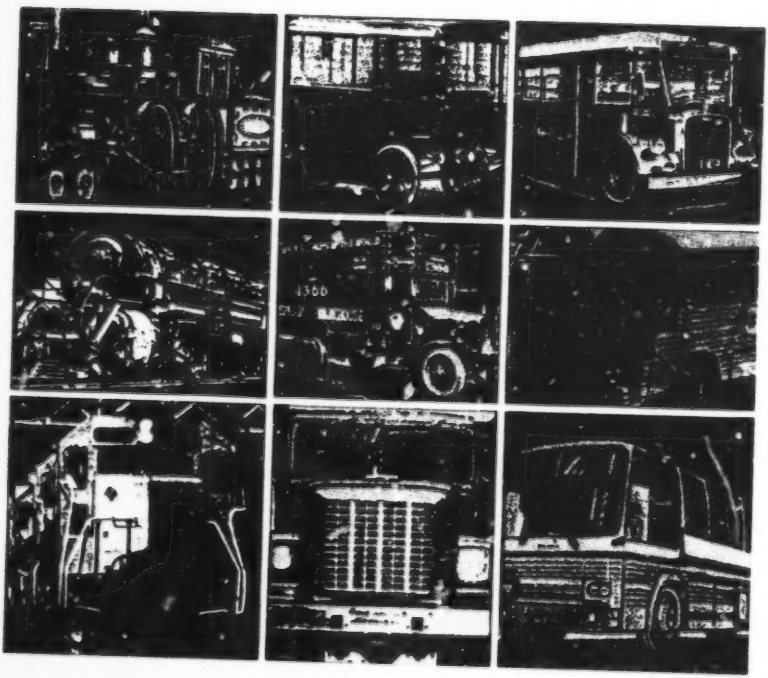

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APPENDIX A

Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organization chart.

STAFF OFFICIALS

Office of the Chairman:
- *Chief of Staff* ..... David M. Konschnik
- *Chief of Policy* ..... John F. Hennigan

Office of Legislative and Public Affairs:
- *Director* ..... Alexander H. Jordan

Office of Public Assistance:
- *Director* ..... Samuel E. Eastman
- *Deputy Director* ..... Dan G. King

Office of Human Relations:
- *Director* ..... Alexander W. Dobbins

Office of the Managing Director:
- *Managing Director* ..... Edward E. Guthrie
- *Director, Personnel Office* ..... Richard H. Mooers
- *Chief, Budget and Fiscal Office* ..... Mary G. Hogya
- *Chief, Administrative Services* ..... Virgil L. Schultz
- *Chief, Systems Development* ..... Edward F. Welkener

Office of the Secretary:
- *Secretary* ..... Noreta R. McGee
- *Assistant Secretary* ..... Kathleen M. King

Office of the General Counsel:
- *General Counsel* ..... Robert S. Burk
- *Deputy General Counsel for Research and Legislation* ..... Daniel D. Campbell
- *Deputy General Counsel* ..... Henri F. Rush
- *Associate General Counsel* ..... Ellen D. Hanson
- *Deputy Associate General Counsel* ..... John J. McCarthy, Jr.

Office of Proceedings:
- *Director* ..... Jane F. Mackall
- *Associate Director* ..... Richard S. Lewis
- *Deputy Director, Section of Railroads* ..... Joseph H. Dettmar
- *Deputy Director, Section of Motor Carriers* ..... Louis E. Gitomer

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Office of Transportation Analysis:
- *Director* ..... William R. Southard
- *Chief, Section of Rail Services Planning* ..... Michael E. Sullivan
- *Chief, Section of Energy and Environment* ..... Carl P. Bausch
- *Chief, Section of Research and Analysis* ..... Leland L. Gardner

Office of Hearings:
- *Chief Administrative Law Judge* ..... Paul S. Cross

Bureau of Accounts:
- *Director* ..... Ronald S. Young
- *Deputy Director* ..... Richard H. Klem

Office of Compliance and Consumer Assistance:
- *Director* ..... Bernard Gaillard
- *Associate Director* ..... William J. Love
- *Deputy Director, Section of Operations* ..... Heber P. Hardy
- *Deputy Director, Section of Enforcement* ..... Charles E. Wagner

Bureau of Traffic:
- *Director* ..... Neil S. Llewellyn
- *Chief, Section of Rates and Informal Cases* ..... Vacant
- *Chief, Section of Tariffs* ..... Charles E. Langyher, III

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DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS

Eastern Region

Regional Headquarters ..... M. Faith Angell
Regional Director
Room 16400
3535 Market St.
Philadelphia, PA 19104

Atlanta ..... Suite 360
Peachtree Twenty-fifth Bldg.
1718 Peachtree St., N.W.
Atlanta, GA 30309

Baltimore ..... 1025 Federal Bldg.
Charles Center
31 Hopkins Plaza
Baltimore, MD 21201

Boston ..... Room 501
150 Causeway St.
Boston, MA 02114

Charlotte ..... Room CC-516
Mart Office Bldg.
800 Briar Creek Rd.
Charlotte, NC 28205

Cleveland ..... Room 913
Celebrezze Federal Bldg.
1240 E. 9th St.
Cleveland, OH 44119

Jacksonville ..... Suite 233
4057 Carmichael Ave.
Jacksonville, FL 32207

New York ..... Room 1807
Jacob K. Javits Federal Bldg.
26 Federal Plaza
New York, NY 10278

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DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS (continued)

Central Region

Regional Headquarters ..... William Redmond, Jr.
Regional Director
Room 1304
Everett McKinley Dirksen Bldg.
219 South Dearborn St.
Chicago, IL 60604

Fort Worth ..... Suite 500
411 West 7th St.
Ft. Worth, TX 76102

Indianapolis ..... Room 429
Federal Bldg. & U.S. Courthouse
46 East Ohio St.
Indianapolis, IN 46204

Kansas City ..... 2111 Federal Bldg.
911 Walnut St.
Kansas City, MO 64106

Minneapolis ..... Room 475
Federal Bldg. & U.S. Courthouse
110 South Fourth St.
Minneapolis, MN 55401

New Orleans ..... T-9038 Federal Bldg. & U.S. Post Office
701 Loyola Ave.
New Orleans, LA 70113

Omaha ..... Room 728, Federal Office Bldg.
106 South 15th St.
Omaha, NE 68102

St. Louis ..... Room 1761
210 North 12th St.
St. Louis, MO 63101

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DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS (continued)

Western Region

Regional Headquarters ..... Stephen Day
Acting Regional Director
Suite 500
211 Main St.
San Francisco, CA 94105

Denver ..... 142 U.S. Customs House
721-19th St.
Denver, CO 80202

Los Angeles ..... 1321 Federal Bldg.
300 North Los Angeles St.
Los Angeles, CA 90012

Phoenix ..... 2028 Federal Bldg.
230 North First Ave.
Phoenix, AZ 85025

Salt Lake City ..... 2419 Federal Bldg.
125 State St.
Salt Lake City, UT 84138

Seattle ..... 858 Federal Bldg.
915 Second Ave.
Seattle, WA 98174

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INTERSTATE COMMERCE COMMISSIONERS
1887-1966

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich.	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	Ill.	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem.	Mar. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	Vt.	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	Ala.	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	Vt.	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	N.Y.	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	Iowa	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	Ga.	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	Vt.	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	Ill.	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	Ill.	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	Mo.	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	Calif.	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	Iowa	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	Ill.	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	Ky.	Dem.	Dec. 31, 1910	Jan. 1, 1920
19. MEYER, Balthasar H.	Wis.	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	Calif.	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	Colo.	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	N.J.	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	Oreg.	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	Va.	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	Mass.	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	Mass.	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J.[1]	N.J.	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	N.Y.	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	Wis.	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	Wash.	Rep.	May 5, 1921	Jan. 6, 1930
31. LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra, Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1929	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934
39. LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937

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Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M. W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALLDREDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, Everett	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	W.Va.	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	Kans.	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	Ill.	Rep.	July 31, 1967	Aug. 31, 1977
75. BURKE, Wallace R.	Conn.	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	Calif.	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	Md.	Rep.	Dec. 15, 1969	June 18, 1982
78. BREWER, W. Donald	Colo.	Rep.	July 23, 1970	June 30, 1974
79. WIGGIN, Chester M., Jr.	N.H.	Rep.	Oct. 24, 1972	July 31, 1973

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	Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
80.	McFARLAND, Alfred T.	Tenn.	Ind.	Nov. 1, 1972	Nov. 10, 1977
81.	MONTEJANO, Rodolfo[1]	Calif.	Dem.	Nov. 3, 1972	Mar. 2, 1973
82.	O'NEAL, A. Daniel, Jr.	Wash.	Dem.	Apr. 12, 1973	Dec. 31, 1979
83.	CLAPP, Charles L.	Mass.	Rep.	Mar. 14, 1974	Mar. 19, 1982
84.	CORBER, Robert J.	Va.	Rep.	Mar. 13, 1975	Dec. 1, 1976
85.	CHRISTIAN, Betty Jo	Tex.	Dem.	Apr. 7, 1976	Dec. 31, 1979
86.	TRANTUM, Thomas A.	Conn.	Rep.	July 23, 1979	July 31, 1981
87.	GASKINS, Darius W.	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88.	ALEXIS, Marcus	Ill.	Dem.	Aug. 27, 1979	June 30, 1981
89.	GILLIAM, Reginald E.	Va.	Dem.	Apr. 21, 1980	Feb. 1, 1983
90.	TAYLOR, Reese H., Jr.	Nev.	Rep.	June 25, 1981	Dec. 31, 1985
91.	STERRETT, Malcolm M. B.[2]	Md.	Rep.	Feb. 12, 1982	
92.	ANDRE, Frederic N.[2]	Ind.	Rep.	Mar. 19, 1982	
93.	SIMMONS, J. J., III[2,3]	Okla.	Dem.	Apr. 27, 1982 Sept. 10, 1984	Feb. 28, 1983
94.	GRADISON, Heather J.[2]	Ohio	Rep.	June 18, 1982	
95.	LAMBOLEY, Paul H.[2]	Nev.	Dem.	Sept. 11, 1984	
96.	STRENIO, Andrew J., Jr.	Md.	Dem.	Sept. 14, 1984	Dec. 31, 1985

[1] Recess appointment only, not confirmed.
[2] Currently serving.
[3] Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

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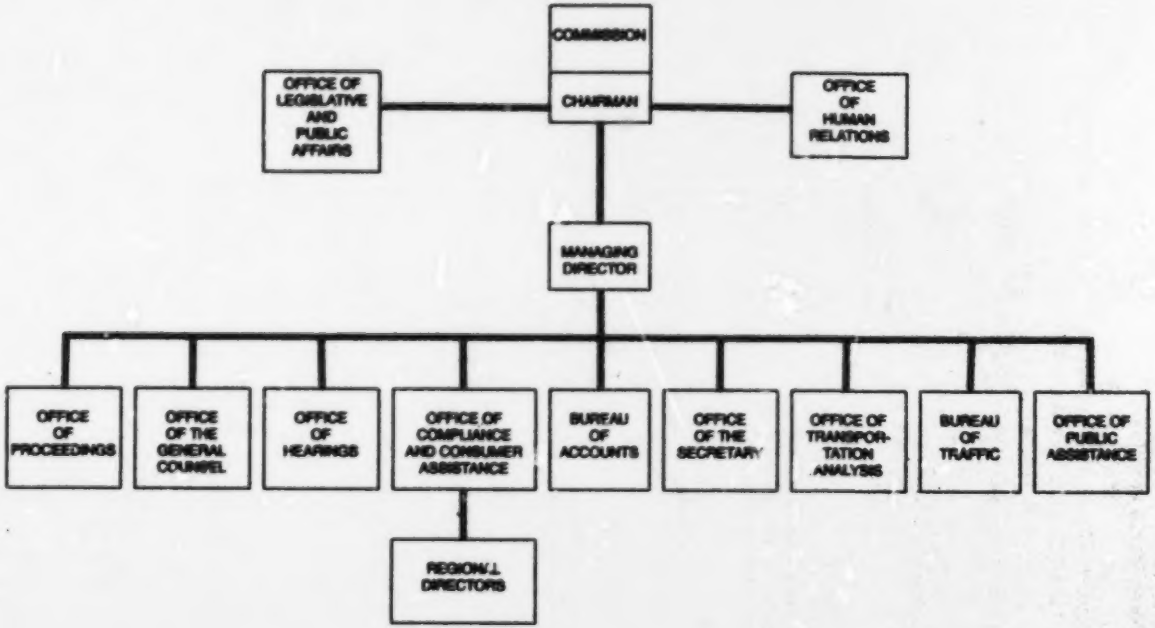
INTERSTATE COMMERCE COMMISSION

Organizational Chart



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APPENDIX B

Commission Workload

Table 1.—Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1986.

Motor Matters						
		Closings				
Case Type	Openings	Opposed	Unopposed	Dismissed/ Rejected/ Withdrawn	Other	Total
Rulemakings	13	12	0	0	0	12
Motor Carrier licensing	8880[1]	122	9332	102	6	9569
Passenger Carrier licensing	8	9	1	1	0	11
Water Carrier licensing	20	2	20	2	0	24
Freight forwarder licensing	64	0	69	4	0	73
Property broker licensing	1848	5	1972	14	0	1991
Motor Carrier complaints	17	10	0	2	0	12
Restriction removals	13	0	7	9	0	16
Investigation & suspension	17	15	0	0	0	15
Motor rate	12	8	0	0	1	9
Passenger rate review	1	3	0	1	0	4
Motor Carrier Financing	288[2]	8	251	33	4	296
Small Carrier Transfer	772[3]	4	774	24	7	809
Motor finance temporary authority	327	0	325	2	0	327
Totals	12260	205	12741	194	18	13158

[1] 735 were passenger-entry applications.
[2] 271 exemptions pursuant to docket Ex Parte No. 55 (Sub-No. 57).
[3] 670 exemptions pursuant to docket Ex Parte No. 55 (Sub-No. 57A).

Rail Matters					
			Closings		
Case Type	Openings	Pending	Procedural Decisions	Substantive Decisions	Total
Rulemakings	11	29	18	35	53
Abandonments (non-Conrail)	52	13	94	156	250
Abandonments (Conrail)	89	16	0	91	91
Abandonment exemptions	123	39	12	105	117
Rates: Complaints, declaratory orders and investigations	29	103	43	62	105
Investigation and suspension	4	3	6	7	13
Exemptions	40	7	0	60	60
Finance docket: exemptions[1]	192	90	18	218	236
Finance docket: (others)[2]	40	35	23	48	71
Totals	580	335	214	782	996

[1] Includes petition's for exemption involving intermodal ownership
[2] Includes construction, trackage rights, licensing, etc.

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Table 2.—Rulemaking proceedings pending and closed during fiscal year 1986 (*Indicates actions completed).

RAILROADS	
Ex Parte No. 230 (Sub-No. 5)	Improvement of TOFC/COFC Regulations
Ex Parte No. 230 (Sub-No. 5A)	Petition to Exempt Rail Movement of New Containers and Trailers
Ex Parte No. 230 (Sub-No. 6)	Improvements to TOFC/COFC Regulations
*Ex Parte No. 274 (Sub-No. 8)	Exemption of Out of Service Rail Lines
*Ex Parte No. 274 (Sub-No. 10)	Environmental Notices in Abandonment and Rail Exemption Proceedings
Ex Parte No. 274 (Sub-No. 11)	Abandonment Regulations—Costing
*Ex Parte No. 274 (Sub-No. 13)	Rail Abandonment—Use of Rights-of-Way as Trails
*Ex Parte No. 274 (Sub-No. 14)	Rail Abandonments—Offers of Financial Assistance
*Ex Parte No. 274 (Sub-No. 15)	Revision of Abandonment Regulations
*Ex Parte No. 282 (Sub-No. 3)	Railroad Consolidation Procedures
*Ex Parte No. 282 (Sub-No. 9)	Railroad Consolidation Procedures—Trackage Rights Exemption
*Ex Parte No. 282 (Sub-No. 11)	Rail Consolidation Procedures—Continuance in Control of a Nonconnecting Carrier
Ex Parte No. 290 (Sub-No. 2)	Railroad Cost Recovery Procedures
Ex Parte No. 290 (Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment Factor
*Ex Parte No. 311	Expedited Procedures for Recovery of Fuel Costs
Ex Parte No. 319	Investigation of Freight Rates for the Transportation of Recyclables and Recycled Materials
*Ex Parte No. 320 (Sub-No. 3)	Product and Geographic Competition
*Ex Parte No. 328	Investigation of Tank Car Allowance System
Ex Parte No. 334 (Sub-No. 6)	Review of Car Hire Regulations
*Ex Parte No. 334 (Sub-No. 7)	Suspension of Car Hire Updates
*Ex Parte No. 346 (Sub-No. 7)	Railroad Exemption—Export Coal
*Ex Parte No. 346 (Sub-No. 9)	Exemption from Regulation Box Car Traffic
*Ex Parte No. 346 (Sub-No. 19)	Box Car Hire and Car Service
Ex Parte No. 346 (Sub-No. 20)	Exemption from Regulation—Storage Leases
*Ex Parte No. 346 (Sub-No. 21)	Railroad Exemption—International Joint Through Rates
Ex Parte No. 346 (Sub-No. 22)	Western Railroads—Petition for Rulemaking—Short Notice Effectiveness for Independently Filed Rail Carrier Rates

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Table 2.—Rulemaking proceedings pending and closed during fiscal year 1986—Continued.

RAILROADS—Continued	
Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines--Nationwide
Ex Parte No. 347 (Sub-No. 2)	Rate Guidelines—Non-Coal Proceedings
Ex Parte No. 387	Railroad Transportation Contracts
*Ex Parte No. 387 (Sub-No. 958)	Exemption from Regulation—Shipments Subsequently Made Subject to a Contract Rate
Ex Parte No. 388	State Intrastate Rail Rate Authority
Ex Parte No. 389	Procedures for Requesting Rail Variable Cost and Revenues Determination for Joint Rates Subject to Surcharge or Cancellation
*Ex Parte No. 392 (Sub-No. 1)	Class Exemption for the Acquisition and Operation of Rail Line Under 49 U.S.C. 10901
Ex Parte No. 392 (Sub-No. 2)	Class Exemption for the Construction of Connecting Tracks 49 U.S.C. 10901
Ex Parte No. 393 (Sub-No. 1)	Standards for Railroad Revenue Adequacy
*Ex Parte No. 394 (Sub-No. 2)	Cost Ratio for Recyclables—1986 Determinations
Ex Parte No. 394 (Sub-No. 3)	Cost Ratio for Recyclables—Compliance Procedures
*Ex Parte No. 397	Exemption of Railroads from Security Regulation
Ex Parte No. 399	Cost Recovery Percentage
Ex Parte No. 421	Complaints Filed Under Staggers Rail Act of 1980
Ex Parte No. 431	Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purpose of Surcharge and Jurisdictional Threshold Calculations
Ex Parte No. 444	Electronic Filing of Tariffs
*Ex Parte No. 445 (Sub-No. 1)	Intramodal Rail Competition
Ex Parte No. 455	Revision of the Uniform System of Accounts for Railroads
*Ex Parte No. 456	The Staggers Rail Act of 1980—Conference of Interested Parties
*Ex Parte No. 458	Railroad Cost of Capital—1984
Ex Parte No. 462	Exemption of Demurrage from Regulation
Ex Parte No. 463	Railroad Revenue Adequacy—1984 Determination
Ex Parte No. 464	Railroad Cost of Capital—1985

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Table 2.—Rulemaking proceedings pending and closed during fiscal year 1986—Continued.

TRUCK AND BUS COMPANIES	
*Ex Parte No. MC-5 (Sub-No. 3)	General Investigation and Revocation Procedures Governing Failure To File Or Maintain Prescribed Insurance Or Other Security for Public Protection—Motor Carriers, Broker and Freight Forwarders
*Ex Parte No. MC-5 (Sub-No. 7)	Foreign Motor Private Carriers of Nonhazardous Commodities Certificates of Insurance
*Ex Parte No. MC-19 (Sub-No. 36)	Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)
*Ex Parte No. MC-37 (Sub-No. 38)	Petition to Establish a Commercial Zone of Cameron, Hidalgo, Starr, and Willacy Counties, TX
Ex Parte No. MC-37 (Sub-No. 39)	Petition to Expand Commercial Zone at Nogales, AZ
Ex Parte No. MC-41	Identification of Motor Vehicles
Ex Parte No. MC-42	Handling of C.O.D. Shipments
Ex Parte No. MC-43 (Sub-No. 16)	Lease and Interchange of Vehicles (Identification Devices) (49 CFR Part 1057)
Ex Parte No. MC-43 (Sub-No. 17)	Authorized Carrier Lease of Equipment and Drivers to Private Carriers and Shippers (49 CFR Part 1057)
Ex Parte No. MC-43 (Sub-No. 19)	Lease and Interchange of Vehicles—Computer Generated Documents
Ex Parte No. MC-55 (Sub-No. 43A)	Acceptable Forms of Requests for Operating Authority; (Motor Carriers and Brokers of Property)
*Ex Parte No. MC-64 (Sub-No. 2A)	Special Temporary Authority Procedures
*Ex Parte No. MC-65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway & Deviation Rules
*Ex Parte No. MC-73 (Sub-No. 1)	Interchange Policies at International Boundaries
*Ex Parte No. MC-82 (Sub- No. 1)	Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry (Petition to amend 49 CFR 1139.20)
*Ex Parte No. MC-95 (Sub-No. 3)	Regulations Governing the Adequacy of Intercity Motor Common Carrier Passenger Service
Ex Parte No. MC-95 (Sub-No. 4)	Practices of Motor Common Carriers of Passengers—Checked Baggage Prohibitions and Liability Exemptions
Ex Parte No. MC-107	Transportation of Government Traffic
Ex Parte No. MC-122 (Sub-No. 2)	Lease of Equipment and Drivers of Private Carriers—Petitions for Modification
*Ex Parte No. MC-128	Revenue Need Standards in Motor Carrier General Increase Proceedings

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Table 2.—Rulemaking proceedings pending and closed during fiscal year 1986—Continued.

TRUCK AND BUS COMPANIES—Continued	
Ex Parte No. MC-142 (Sub-No. 1)	Removal of Restrictions from Authorities, Motor Carriers of Property
Ex Parte No. MC-142 (Sub-No. 2)	Freight Forwarder Restrictions
*Ex Parte No. MC-159	General Investigation and Revocation Procedures Governing Failure to File or Maintain Prescribed Insurance or Other Security for Public Protection—Motor Carriers, Brokers and Freight Forwarders
*Ex Parte No. MC-169 (Sub-No. 1)	Automatic Expansion of Zone of Rate Freedom for Motor Common Carriers of Property and Freight Forwarders
Ex Parte No. MC-170 (Sub-No. 1)	Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates
*Ex Parte No. MC-175	International Joint Through Rates Involving Ocean Carriers—Revision of Tariff Filing Requirements
*Ex Parte No. MC-176	Short Notice Effectiveness for Independently-Filed Motor Passenger Carrier Rates
Ex Parte No. MC-177	National Industrial Transportation League—Petition To Institute Rulemaking On Negotiated Motor Common Carrier Rates
Ex Parte No. MC-178	Investigation into Motor Carrier Insurance Rates
Ex Parte No. MC-178 (Sub-No. 1)	Petition for Investigation of Insurance Surcharges
*Ex Parte No. MC-178 (Sub-No. 2)	Petition for Rulemaking of The American Bus Association Concerning Enforcement of Minimum Insurance Standards
Ex Parte No. MC-178 (Sub-No. 3)	Investigation into Motor Carrier Insurance Rates Conference of Interested Parties

TABLE 3.—Listing of formal significant cases, September 30, 1986

MOTOR SECTION

Number	Title/Description	Statutory Deadline
1. Ex Parte No. 55 (Sub-No. 43A) and Ex Parte No. MC-142 (Sub-No. 1)	Acceptable Forms of Requests for Operating Authority; (Motor Carriers and Brokers of Property) Removal of Restriction from Authorities of Motor Carriers of Property.	None
2. Ex Parte No. MC-122 (Sub-No. 2)	Lease of Equipment and Drivers of Private Carriers—Petitions for Modification	None
3. Ex Parte No. MC-170 (Sub-No. 1)	Short Notice Effectiveness for Independently Filed Single-Factor Motor-Water Rates	None

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MOTOR SECTION

Number	Title/Description	Statutory Deadline
4. Ex Parte No. MC-177	National Industrial Trans,ortation League—Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates	None
5. Ex Parte No. MC-178	Investigation into Motor Carrier Insurance Rates	None

RAIL SECTION

Number	Title/Description	Statutory Deadline
1. Ex Parte No. 230 (Sub-No. 6)	Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)	None
2. Ex Parte No. 334 (Sub-No. 6)	Review of Car Hire Regulation	None
3. S5B2, S5B3, S5B6	Western, Eastern, and Southern Rate Bureau Agreements	None
4. F. D. No. 30400	Santa Fe Southern Pacific Corp.-Control—Southern Pacific Trans. Company: Merger-The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transp. Co.	10/20/86

OTHER BUREAUS AND OFFICES

Number	Title/Description	Statutory Deadline
1. Ex Parte No. 290 Sub-No. 4)	Railroad Cost Recovery Procedures—Productivity Adjustment	None
2. Ex Parte No. 347 (Sub-No. 2)	Rate Guidelines—Non-Coal Proceedings	None
3. Ex Parte No. 393 (Sub-No. 1)	Standards for Railroad Revenue Adequacy	None
4. Ex Parte No. 399	Cost Recovery Percentage	None
5. Ex Parte No. 431	Adoption of the Uniform Railroad Costing System	None
6. Ex Parte No. 455	Revision to the Uniform System of Accounts for Railroads	None
7. Ex Parte No. 464	Railroad Cost of Capital—1985	None
8. Docket No. 38904	Elimination of Accounting and Reporting Requirements for Motor Carriers of Property	None
9. Docket No. 39953	Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers	None

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TABLE 4.—Informal Proceedings

	Fiscal Year 1984	Fiscal Year 1985	Fiscal Year 1986
Applications for motor temporary authority			
Filed	3,630	2,694	2,636
Disposed of	3,778	2,713	2,608
Pending at end of year	158	139	167
Petitions in application for motor carrier temporary authority (received at headquarters)			
Filed	240	71	5
Disposed of	244	103	13
Pending at end of year	40	8	0

TABLE 5.—Certificates issued for abandonment, construction, acquisition and operation of rail lines (these figures reflect abandonment applications filed by bankrupt carriers and Conrail for fiscal years 1984 and 1985 under North East Rail Service Act (NERSA)).

	Fiscal Year 1984		Fiscal Year 1985		Fiscal Year 1986	
	Appli-cations	Miles	Appli-cations	Miles	Appli-cations	Miles
1. Abandonment applications filed	472**	3,878	138***	2,877.23	141*	1,890.89
Certificate of abandonment						
Granted	419	3,083	148	2,342.63	117	1,417.35
Denied	7	548	3	102.85	4	147.86
Dismissed	5	69	30	656.86	2	74.16
Dismissed because of sale	0	0	0	0	9	201.03
2. Construction applications filed	0	0	7†	98.75	0	0
Granted	0	0	5	171.00	1	10.70
Denied	0	0	0	0	0	.0
Dismissed	0	0	1	0.25	1	6.50
3. Acquisition and operation applications filed	0	0	1	15.35	0	0
Granted	0	0	0	0	1	15.35
Denied	0	0	0	0	0	0
Dismissed	0	0	1	28.0	0	0

* 80 were Conrail filings.
** 308 were Conrail filings.
*** 28 were Conrail filings.
† Includes 4 remanded by Court.

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TABLE 6.--Tariff schedules, fiscal year 1986

	Received	Criticized	Rejected
Freight			
Common carrier tariffs:			
Rail	78,878	309	345
Motor	1,173,983	5,003	10,359
Water	28,155	18	125
Freight Forwarder	12,052	18	47
International Ocean-Land Intermodal	200,930	0	0
Total	1,493,978	5,348	10,876
Contract carrier filings:			
Rail Contracts	26,171	636	25
Passenger tariffs:			
Rail	33	1	0
Motor	2,358	58	47
Water	0	0	0
Total passenger	2,391	59	47
Grand total	1,522,540	6,043	10,948

SPECIAL PERMISSION APPLICATIONS

Received	Granted	Denied	Grant/Denied in Part	Withdrawn
1,039	923	12	49	55

TABLE 7.—Action taken on proposals (protested and non-protested) considered for suspension and/or investigation.

	Suspensions—Fiscal Year 1986					
	Rail	Motor	Water	Fght. Fwdr.	Total No.	Percent
Suspended in full	4	16	0	0	20	35.1
Suspended in part	0	0	0	0	0	0
*Not suspended or investigated	6	12	2	0	20	35.1
*Not suspended but investigated	2	2	0	0	4	7.0
**Otherwise disposed of	6	6	1	0	13	22.8
Total	18	36	3	0	57	100.0

* Permitted to become effective.
** Schedules canceled or rejected; protests withdrawn or filed too late.

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TABLE 8.—Informal rate cases branch (Bureau of Traffic—fiscal year 1966)

Rate cases general:	
On hand beginning of year	100
Received during year	6848
Disposed of during year	6800
Pending at end of year	148
Informal complaints:	
On hand beginning of year	11
Received during year	12
Disposed of during year	15
Pending at end of year	8
Decisions—Statement of Claimed Damages (49 CFR 1133.2):	
On hand beginning of year	0
Received during year	3
Disposed of during year	3
Pending at end of year	0
Special Docket Board	
On hand beginning of year	71
Received during year	547
Disposed of during year	568
Pending at end of year	30

TABLE 9.—ICC unit of the National Defense Executive Reserve (NDER)

NDER Group	Fiscal Year 1964 On Roll	Fiscal Year 1965 On Roll	Fiscal Year 1966 On Roll
Rail	483	483	390
Motor	104	104	99
Water	33	33	28

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TABLE 10.—Car Supply—Cars Installed, Retired, and Ordered, Class I Railroads

	Fiscal Year			
	1971	1976	1981	1986
Cars Installed:				
Box	18,292	5,221	1,103	0
Refrigerator	5,233	704	0	0
Gondola	5,906	4,036	3,776	56
Hopper	15,789	22,337	6,627	135
Covered hopper	7,911	2,982	9,824	100
Flat	1,958	2,028	524	595
Other	675	0	1,166	0
Total cars	53,764	37,308	23,020	886
Cars Retired:				
Box	29,335	29,531	35,375	28,517
Refrigerator	7,028	778	3,399	4,111
Gondola	10,725	8,162	12,374	6,793
Hopper	17,406	19,976	16,506	17,829
Covered hopper	1,605	2,759	6,594	5,018
Flat	1,438	2,897	5,444	−568*
Other	2,875	3,117	2,062	1,958
Total cars	67,536	65,894	81,774	63,658
Cars Ordered:				
Box	9,272	7,348	282	0
Refrigerator	6,045	100	0	0
Gondola	5,508	3,170	2,173	3
Hopper	16,917	11,459	3,563	135
Covered hopper	10,865	4,788	6,771	100
Flat	3,306	1,707	553	595
Other	6,815	4,920	1,075	0
Total cars	59,028	33,492	14,419	833

* Negative retirement indicates increase in ownership in excess of new installations, resulting from reclassification or transfer of equipment, purchase or lease of used equipment, etc.

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TABLE 11.—Ownership, Serviceable Ownership, and Turnaround Time, Class I Railroads

	Fiscal Year			
	1971	1976	1981	1986
Ownership:				
Plain Box	358,867	291,851	180,786	83,815
Equipped box	171,592	169,847	159,428	110,868
Total box	530,479	461,698	320,194	194,683
Refrigerators	98,707	85,433	59,563	38,109
Gondolas	186,857	172,008	143,111	106,226
Hoppers	390,398	346,474	307,926	223,740
Covered hoppers	134,883	156,421	173,183	150,876
Flat	75,444	97,079	91,747	85,758
Other	49,165	34,347	26,022	17,126
Total cars	1,464,813	1,353,406	1,121,736	816,518
Serviceable cars:				
Plain Box	327,475	256,943	143,392	72,972
Equipped box	162,577	150,255	142,069	92,151
Total box	490,052	407,198	285,461	165,123
Refrigerators	94,365	79,032	54,888	34,474
Gondolas	176,329	155,368	131,265	96,378
Hoppers	375,192	327,034	293,674	205,574
Covered hoppers	130,350	146,511	164,233	139,738
Flat	70,905	90,219	86,438	81,370
Other	46,853	32,224	24,756	16,219
Total cars	1,384,046	1,237,586	1,040,175	740,874
	Calendar Year			
	1970	1975	1980	1985
Turnaround time—days				
Box	22.4	30.0	34.2	38.8
Refrigerators	33.2	25.4	36.4	51.8
Gondolas	19.1	22.1	20.5	19.1
Hoppers	13.9	13.8	14.7	14.7
Covered hoppers	20.2	24.0	26.6	33.0
Flat	13.5	16.6	17.6	11.8
Average all cars	18.7	22.0	23.2	22.6

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TABLE 12.—Extension of Time Limits—Rail Proceedings, Fiscal Year 1986

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. 39669, Newell Enterprises, Inc., et al. v. The Atchison, Topeka & Santa Fe Railway Company, et al. (embracing No. 39706, U.S. Reduction Co. v. Louisville & Nashville Railroad Co., et al. and No. 39184, Pleist Bros. Scrap Iron & Metal Inc. v. The Atchison, Topeka & Santa Fe Railway Company et al.)	Complaints	November 8, 1985	90-day extensions to consider jurisdiction of the Commission to entertain rate complaints involving automobile shredder residue in light of the decision in *Norfolk & Western Ry. Co. v. United States*, 768 F.2d 373.
No. 39739, Bartlett Agri Enterprises, Inc., et al. v. Missouri Pacific Railroad Company	Complaint	November 26, 1985	60-day extension to consider complex legal issues.
No. 39668, Arkansas Power & Light Co. v. Burlington Northern Railroad Company	Complaint	January 8, 1986	90-day extension to consider complex legal issues.
No. 39647, Newell Recycling Co. Inc. v. Norfolk Southern Corp., et al. (embracing No. 37666, Huron Valley Steel Co. v. Norfolk and W. Ry. Co.; No. 39669, Newell Enterprises, Inc., et al. v. The Atchison, Topeka & Santa Fe Railway Co., et al.; No. 39706, U.S. Reduction Co. v. Louisville & Nashville Railroad Co., et al.; No. 39756, Pleist Bros. Scrap Iron & Metal, Inc. v. Chicago and N.W. Trans. Co., et al; No. 39614, Pleist Bros. Scrap Iron & Metal, Inc. v. The Atchison, T. & S.F. Ry. Co., et al.; and No. 39666, Huron Valley Steel Co. v. Seaboard System R. R. Inc., et al.	Complaints	July 10, 1986	Indefinite extension to consider complex legal issues.

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APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. The Commission additionally issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO stock number has been included. Price information may be obtained by contacting:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
Telephone (202) 783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Bureau of Accounts (AC)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Legislative and Public Affairs (OLPA)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of the Secretary
  Publications Room (Rm. B-221)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Transportation Analysis (OTA)
  Interstate Commerce Commission
  Washington, D.C. 20423
- Office of Public Assistance (OPA)
  Interstate Commerce Commission
  Washington, D.C. 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Bureau of Accounts' Public Reference Room, Room 3378, from 8:30 a.m. to 5:00 p.m. weekdays. Photocopies of these reports, at a cost of 60 cents per page, with a $3.00 minimum charge per order, may be obtained by writing to the Office of the Secretary, Room 2215, ICC, Washington, D.C. 20423.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to one year from the date of service from TS Infosystems, Inc. (TSI), Room 2229, ICC, Washington, D.C. 20423, or by calling (toll-free) 800-424-5403 or (202) 289-4357. Printed reports in the "ICC" and "MCC" series are also available from the Commission's Publications Room while supplies last. Printed reports in the "ICC 2nd Series" only are available through TSI.

CONSUMER PUBLICATIONS

OCP-100 Household Goods Information—OCCA

This booklet explains consumer rights when moving household goods across state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress

94th 1980 (026-000-01195-7)*
95th 1981 (026-000-01225-2)*
96th 1982 Out of print
97th 1983 (026-000-01238-4)*
98th 1984 (026-000-01247-3)*
99th 1985 (026-000-01250-3)*
100th 1986 (026-000-0 -)*

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Code of Federal Regulations, Title 49, Revised to October 1986

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures. (022-003-94228-9)*

Parts 1200-1299: Uniform system of accounts destruction of reports, valuation. (022-033-94229-7)*

Parts 1300-End: Passenger freight tariffs and schedules, credit regulations. (022-033-942301-1)*

Interstate Commerce Act

Available from the Government Printing Office in U.S. Code, 49 U.S.C. Sec. 10101 et seq.*

ICC Register

A daily summary of motor carrier applications and of decisions and notices issued by the ICC. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Department of Transportation and State Regulations—Bulletin No. 9—OPA

Fees for Various and Related Services of the Interstate Commerce Commission—OPA (November 1985)

Government Traffic—Bulletin No. 3—OPA

Guide to Applying for Permanent Operating Authority: Passengers—OPA (October 1984)

Guide to Applying for Permanent Operating Authority: Property—OPA (February 1986)

Guide to Applying for Temporary or Emergency Temporary Operating Authority—OPA (August 1986)

Guide to Filing Protests, Replies and Appeals—Bulletin No. 6—OPA

Highlights of the Bus Regulatory Reform Act of 1982—Bulletin No. 2—OPA

Highlights of the Motor Carrier Act of 1980—Bulletin No. 1—OPA

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OPA

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OPA

Illegal Lumping—OCCA

Addresses illegal "lumper" practices

Lease-Purchase Plans—OPA

Loss and Damage Claims! Can you Collect?—OPA

Owner Operator Food Transportation—Bulletin No. 4—OPA

Sample Caption Summaries—Bulletin No. 7—OPA

Self-Help Against Unauthorized Operations—OCCA

So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—OPA (September 1986)

Speeches and Statements—OLPA

ICC Commissioners' speeches or statements before Congressional committees may be obtained on an individual basis from the Office of Legislative and Public Affairs, Room 4111, ICC, Washington, D.C. 20423. Telephone (202) 275-7252.

State Regulatory Commissions and Fuel Tax Divisions—Bulletin No. 10—OPA

SPECIALIZED PUBLICATIONS

Motor

Customer Pickup of Food and Grocery Products Under Section 8 of the Motor

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Carrier Act of 1980—OTA (November 1986)

Minority and Female Motor Carrier Profile—OPA (October 1986)

Staff Report No. 10—Highlights of Activity in the Property Motor Carrier Industry—OTA (March 1986)

Selected Statistics of Class II Motor Carriers of Property—SE (Calendar 1984)

Transport Statistics in the U.S.: Motor Carriers—SE

(First Release, Part 2, 1984)
(Second Release, Part 2, 1984)

Rail

Class I Line-Haul Railroads, Selected Earnings Data—SE (Quarterly)

Conrail Abandonment Brochure—OTA

Contract Advisory Service Summaries of Contracts Filed with the Commission—OTA (Quarterly)

Guidelines for Evaluating the Feasibility of Short Line Operations—OTA (August 1982)

Railroad Abandonment Brochure—OTA

Railroad TOFC/COFC Monitoring Study—OTA (December 1985)

Report on the Impact of Joint Rates and Reciprocal Switching Cancellations—OTA (December 1986)

Report of Railroad Employment Class I Line-Haul Railroads—SE

Statement No. M-350 (Monthly)

Transport Statistics in the U.S.: Railroads (First Release, 1985)—SE

Wage Statistics of Class I Railroads in the U.S.—SE

Statement No. A-300 (Calendar 1985)

URCS-Uniform Railroad Costing System, 1980 Railroads Cost Study—AC

Technical documentation and explanation of the Uniform Railroad Costing System (December 1982)

URCS—Uniform Railroad Costing System, 1980 Rail Carload Cost Scales—AC

Documentation and regional data for manual calculations under the Uniform Railroad Costing System (April 1983)

URCS—Uniform Railroad Costing System, Phase III, Movement Costing Program User's Manual—AC

Description of the independent interactive computer program for estimating cost of specific, individual rail movements (April 1983)

URCS—Uniform Railroad Costing System, Phase III, Movement Costing Program Technical Manual—AC

Description of Fortran costing programs compatible to Data General Corporation (DEC) and IBM equipment (April 1983)

General

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data—AC

- *Large Class I Motor Carriers of Property;*
- *Large Class I Motor Carriers of Passengers; and*
- *Large Class I Household Carriers*

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APPENDIX D

Appropriations and Employment

The following statement shows average full-time employment and total appropriations for the fiscal years 1952 to 1986 for activities included under the current appropriation title "Salaries and Expenses."

Year	Appropriation	Average Employment	Year	Appropriation	Average Employment
1952	11,284,035	1,890	1970	27,742,660	1,802
1953	11,003,500	1,849	1971	28,442,000	1,731
1954	11,284,000	1,838	1972	30,640,000	1,676
1955	11,679,655	1,859	1973	33,720,000	1,786
1956	12,896,000	1,902	1974	40,681,000	1,874
1957	14,879,696	2,090	1975	44,970,000	1,986
1958	17,412,375	2,236	1976	52,455,000	2,034
1959	18,747,800	2,256	TQ	12,290,000	2,113
1960	19,650,000	2,344	1977	60,766,000	2,084
1961	21,451,500	2,386	1978	65,075,000	2,040
1962	22,075,000	2,400	1979	70,400,000	2,040
1963	23,502,800	2,413	1980	79,063,000	1,946
1964	24,670,000	2,408	1981	82,400,000	1,852
1965	26,715,000	2,339	1982	70,150,000	1,540
1966	27,540,000	2,378	1983	65,800,000	1,319
1967	27,169,000	1,929	1984	60,000,000	1,158
1968	22,946,000	1,899	1985	51,100,000	915
1969	24,664,000	1,808	1986	48,408,000	806

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Status of Appropriations

Status of fiscal year 1986 appropriations as of September 30, 1986:

Salaries and expenses:	
Total appropriations	$48,180,000
Unobligated balance transferred from Directed Rail Service	2,300,000
Balanced Budget and Emergency Deficit Control Act of 1985 reduction	(2,072,000)
Net total	48,408,000
Reimbursements	121,817
Total obligations	45,833,543
Unobligated balance lapsing	2,696,274
Directed Rail Service:	
Unobligated balance available from prior appropriation	2,352,920
Unobligated balance transferred to Salaries and expenses	2,300,000
Total obligations:	
Payments to carriers	—0—
Recoveries of prior years' obligations	—0—
Unobligated balance available (end of year)	59,920

Receipts

Status of receipt accounts as of September 30, 1986

Registration and filing fees	$4,463,548
Fines, penalties and forfeitures	1,133,826
Service charges for allotments of pay for savings account	—0—
Charges for administrative services	48,788
Recoveries from railroad loan guarantees	—0—
Miscellaneous recoveries and refunds	2,036
Withholding for military benefits	—0—
Total Receipts	5,646,198

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APPENDIX E

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission

	Number
Carriers subject to Uniform System of Accounts and required to file annual and periodic reports as of December 31, 1986:	
Railroads, class I[1]	25
Motor carriers class I passenger[2]	56
Motor carriers class I property[3]	947
Motor carriers class II property[4]	1,387
Total	2,415
Carriers filing annual reports but not subject to prescribed Uniform System of Accounts as of December 31, 1986:	
Holding companies (rail)	3
Carriers and organizations not subject to filing annual reports as of December 31, 1986:	
Railroads, class II[5]	20
Railroads, class III[6]	290
Railroads, switching and terminal companies	119
Railroad lessor companies	95
Stockyard companies	5
Carlines (companies which furnish cars for use on lines of railroads)	166
Holding companies (motor)	66
Motor carriers of passengers, other than class I	3,625
Classes I and II motor carriers of property relieved from reporting requirements of classes I or II, etc.	711
Class III motor carriers of property	33,903
Water carriers	306
Maritime carriers	6
Freight forwarders	420
Rate bureaus and organizations	69
Coal slurry pipeline company	1
Protective service companies	6
Total	39,814
Grand Total	42,232

[1] Railroad companies having adjusted annual operating revenues of $50,000,000 or more for three consecutive years.
[2] Motor carriers having annual operating revenues in excess of $3,000,000.
[3] Motor carriers having adjusted annual operating revenues in excess of $5,000,000 for three consecutive years.
[4] Motor carriers having adjusted annual operating revenues less than $5,000,000 but in excess of $1,000,000 for three consecutive years.
[5] Railroad companies having adjusted annual operating revenues less than $50,000,000 but in excess of $10,000,000 for three consecutive years.
[6] Railroad companies having adjusted annual operating revenues less than $10,000,000 for three consecutive years.

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TABLE 2.—Recapitulation of preliminary 1985 operating revenues, net investment and taxes (dollars in thousands)

Kind of carrier	Number of Carriers Represented[1]	Operating Revenues	Net Investments	Income taxes on Ordinary Income[2]
Railroads—class I line haul	24	$27,586,441	$46,605,635	$ 674,567
Motor carriers of property—class I intercity	738	34,902,333	8,607,571	676,692
Motor carriers of passengers—class I intercity	43	1,233,077	566,779	12,604
Total	805	63,721,851	55,779,985	1,315,863
		Percentage distribution		
Railroads—class I line haul	3.0	43.3	83.6	47.4
Motor carriers of property—class I intercity	91.7	54.8	15.4	51.6
Motor carriers of passengers—class I intercity	5.3	1.9	1.0	1.0
Total	100.0	100.0	100.0	100.0

[1] Carriers for which preliminary financial and statistical data were available.
[2] Federal income taxes and provisions for deferred taxes only for railroads, all other carriers include Federal and State income taxes, and provisions for taxes.

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TABLE 3.—Class I line-haul railroads shareholder's equity, long term debt and dividends (dollars in thousands)

Item	1983	1984	1985
1. Shareholders' equity			
a. Capital stock	$ 4,229,805	$ 4,176,032	$ 3,849,368
b. Capital surplus	6,503,950	6,582,185	6,466,434
c. Retained income	16,085,155	17,663,347	17,241,780
d. Total equity	26,818,910	28,421,564	27,557,582
2. Long-term debt	11,494,414	11,178,862	10,450,655
3. Total equity and debt	38,313,324	39,600,426	38,008,237
4. Ratio to debt of equity (percent)	30.00	28.23	27.50
5. Amount of dividends[1]			
a. Cash	$ 1,114,486	$ 1,123,747	$ 1,430,948

[1] Includes duplications on account of intercorporate payment.

NOTE: The data shown above are based upon ratable depreciation accounting for track structures (DA), which the Commission prescribed beginning with financial data filed by railroads for the year 1983 (Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, 367 ICC 157).

For purposes of comparability and consistency, the data shown above exclude Boston and Maine Corporation and Delaware and Hudson Railway Company, which received waivers from the Commission for adoption of DA for all or a portion of 1983.

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TABLE 4.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1983	1984	1985
1. Number of carriers represented	29	29	22
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight	$25,386,335	$28,077,394	$26,468,787
b. Passenger	106,539	101,189	103,205
c. Total operating revenues	26,283,605	29,040,737	27,331,093
3. Total operating expenses	23,673,218	25,445,005	24,997,912
4. Railway tax accruals	2,103,205	2,591,907	2,700,389
5. Net railway operating income	1,827,737	2,513,561	1,748,052
6. Ordinary income	1,843,039	2,793,986	1,787,424
7. Extraordinary items—Net[1]	13,567	−455	93,371
8. Net income	1,862,606	2,793,531	1,880,795
NET INVESTMENT AND EQUITY			
9. Net investment in transportation property and equipment plus working capital	42,889,644	45,164,745	46,456,264
10. Shareholders' equity	26,818,910	28,421,564	27,557,582
FINANCIAL RATIOS (PERCENT)			
11. Operating ratio (L. 3÷L. 2c)	90.14	87.62	91.36
12. Return on net investment (L. 5÷L. 9)	4.25	5.57	3.76
13. Return on equity:			
a. Ordinary income basis (L. 6÷L. 10)	6.87	9.83	6.49
b. Net income basis (L. 8÷L. 10)	6.95	9.83	6.82
EMPLOYEE DATA			
14. Average number	317,119	319,061	297,985
15. Compensation:			
a. Total	$10,192,713	$10,871,868	$10,432,766
b. Per hour paid for	13.296	13.848	14.305

[1] Includes income taxes on extraordinary items and discontinued operations and accounting changes.

NOTE: The data shown above are based upon ratable depreciation accounting for track structures (DA), which the Commission prescribed beginning with financial data filed by railroads for the year 1983 (Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, 367 ICC 157).

For purposes of comparability and consistency, the data shown above exclude Boston and Maine Corporation and Delaware and Hudson Railway Company, which received waivers from *the Commission for adoption of DA for all or a portion of 1983.*

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TABLE 5.—Class I line-haul railroads' current assets and current liabilities as of December 31, 1984 and 1985 (dollars in thousands)

Item	1984 Amount	Percent of Change	1985 Amount	Percent of Change
Total current assets	$9,852,490	+10.9	$9,350,269	−4.8
Cash and temporary cash investments	3,226,484	+24.9	2,651,442	−17.8
Materials and supplies	1,325,519	+12.3	1,144,612	−13.6
Total current liabilities	7,993,900	+5.7	8,286,745	+3.8
Net working capital:				
Including materials and supplies	1,858,590	+40.0	1,063,524	−41.7
Excluding materials and supplies	533,071	+264.4	−61,088	—
Ratios:				
Current assets to current liabilities:				
Including materials and supplies	1.23		1.13	
Excluding materials and supplies	1.07		.99	
Cash and temporary cash investments to current liabilities	.41		.32	

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TABLE 6.—Class I intercity motor carriers of property condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1993	1994	1995[1]
1. Number of carriers represented	923	832	736
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight-intercity-common carrier	$29,267,511	$30,480,633	$29,018,909
b. Freight-intercity-contract carrier	1,756,872	2,083,648	2,518,184
c. Freight-local cartage	305,981	332,758	272,406
d. Intercity transportation for other motor carriers	227,229	188,180	183,292
e. Other operating revenue	2,339,830	2,735,049	2,909,532
f. Total operating revenues	33,809,453	35,820,228	34,902,335
3. Operating expenses	32,090,548	34,099,983	33,231,347
4. Lease of distinct operating unit—net	1,632	1,778	453
5. Net carrier operating income	1,810,539	1,722,143	1,671,439
6. Other income and miscellaneous deductions from income—net	−141,688	−183,510	−168,436
7. Income taxes on ordinary income[2]	701,872	636,787	678,892
8. Ordinary income	966,979	901,846	824,311
9. Extraordinary items—net[3]	47,544	65,298	51,418
10. Net income	1,014,523	967,144	875,729
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	7,628,646	8,206,026	8,607,571
12. Shareholders' and proprietors' equity	5,976,079	6,451,402	6,578,463
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L. 3÷L. 2f)	94.86	95.20	95.21
14. Return on net investment (L. 5÷L. 11)	23.73	20.99	19.42
15. Return on equity (L. 10÷L. 12)	16.97	14.99	13.31
EMPLOYEE DATA			
16. Average number	475,700	498,356	484,539
17. Compensation	$12,401,002	$13,159,685	$12,871,562

[1] Preliminary.
[2] Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code. Also does not include income taxes on extraordinary items. Includes provision for deferred taxes.
[3] Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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TABLE 7.—Class I intercity motor carriers of passengers condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1983	1984	1985[1]
1. Number of carriers represented	45	43	43
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Passenger intercity schedules	$ 872,311	$ 861,389	$ 836,122
b. Local and suburban schedules	3,652	3,902	5,144
c. Charter or special service	180,362	176,783	178,836
d. Other operating revenue	220,144	213,436	212,975
e. Total operating revenues	1,276,469	1,254,280	1,233,077
3. Operating expenses	1,223,249	1,254,250	1,167,631
4. Lease of carrier property—net	187	74	−131
5. Net carrier operating income	−6,593	684	65,315
6. Other income and miscellaneous deductions—net	23,031	52,170	107
7. Income tax on ordinary income[2]	-9,560	9,947	12,604
8. Ordinary income	25,996	42,907	52,818
9. Extraordinary items—net[3]	10,791	4,358	−198
10. Net income	36,789	47,265	52,620
NET INVESTMENT AND EQUITY			
11. Net investment in carrier operating property and equipment plus working capital	655,221	596,729	566,779
12. Shareholders' and proprietors' equity	627,225	631,856	544,417
FINANCIAL RATIOS (PERCENT)			
13. Operating ratio (L. 3÷L. 2e)	100.53	99.95	94.69
14. Return on net investment (L. 5÷L. 11)	—	0.11	11.52
15. Return on equity (L. 10÷L. 12)	5.67	7.48	9.67
EMPLOYEE DATA			
16. Average number	25,020	24,674	23,588
17. Compensation	$ 570,420	$ 551,067	$ 517,952

[1] Preliminary.
[2] Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code. Also does not include income taxes on extraordinary items. Includes provision for deferred taxes.
[3] Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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